



FEDERAL ACQUISITION CIRCULAR

December 21, 1992

Number 90-16

Federal Acquisition Circular (FAC) 90-16 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-16 is effective *[insert date 60 days from publication in the Federal Register]*, except for the following items:

Item I, which is effective *October 1, 1992*;

Items X, XI, and XXIV which are effective *[insert date of publication in the Federal Register]*; and

Item XVII, which is effective *April 1, 1991*.



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FAC 90-16 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 90-16 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Contractor Establishment Code (FAR Case 91-81)

FAR 4.602 is amended by revising paragraph (d) to reflect the new Contractor Establishment Code (CEC) numbering system; FAR 4.603 and the solicitation provision at 52.204-4, Contractor Establishment Code, are removed.

Replacement pages: TOC, Part 4, 4-3 and 4-4, TOC, Part 52 (pp. 1&2), 52-15, 52-16, 52-16.1, and 52-305 and 52-306.

Item II—Technical Changes to FAR Part 4, Administrative Matters (FAR Case 91-89)

FAR 4.805(b) and (e) are revised to clarify retention periods for contracts.

Replacement pages: 4-9 and 4-10.

Item III—Publicizing Subcontract Opportunities (FAR Case 91-90)

FAR 5.206 is revised to stress the importance of prime contractors using the Commerce Business Daily to seek additional small, small disadvantaged, and women-owned business subcontracting sources, and to meet subcontracting goals.

Replacement pages: 5-3 and 5-4.

Item IV—Metrics (FAR Case 92-611)

FAR 7.103, Agency-head responsibilities, is amended to encourage the use of the metric system of measurement in Government procurements.

Replacement pages: 7-1 thru 7-4.

Item V—Contractor versus Government Performance, FAR Subpart 7.3 and Part 52 (FAR Case 91-26)

Changes are made to FAR 7.302(d) to alert the contracting officer to the possibility of performing a cost comparison for the specific reason that commercial prices were believed to be unreasonable; and to make more general the language that pertains to when a cost comparison study must be made, so that future

changes to statutes or regulations concerning cost comparisons will not require a change to the FAR. Minor editorial changes are made to the solicitation provisions at FAR 52.207-1 and 52.207-2.

Replacement pages: 7-5 thru 7-8, 52-15, 52-16, 52-16.1.

Item VI—Change in Government Specified Source for Strategic and Critical Materials from Excess GSA Inventories (FAR Case 91-76)

FAR 8.002(f) is revised to change the Government specified source for excess strategic and critical materials from GSA to DOD.

Replacement pages: 8-1 and 8-2.

Item VII—List of Parties Excluded from Procurement Programs (FAR Case 91-65)

FAR 9.404(d) is revised to provide additional guidance on accessing the List of Parties Excluded from Procurement Programs.

Replacement pages: 9-11 thru 9-14.

Item VIII—Use of Small Purchase Procedures for Personal Services (FAR Case 91-80)

The word "nonpersonal" is deleted from FAR 13.000, and from the definitions of "purchase order" and "small purchase" in FAR 13.101. A new paragraph (c) is also added to FAR 13.103 to emphasize that specific statutory authority is required to purchase personal services. A reference to FAR 37.104 is included.

Replacement pages: 13-1 and 13-2.

Item IX—OMB Circular A-133, Audits of Institutions of Higher Learning and Other Nonprofit Institutions (FAR Case 91-38)

Guidance to contracting officers and a contract clause are added to implement the requirements of OMB Circular A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions".

The threshold is increased to the level of the small purchase threshold from \$10,000 for application of the Examination of Records by Comptroller General clause and for application of the Audit-Negotiation clause to subcontracts.

Replacement pages: 15-1 and 15-2, and 52-41 and 52-42.

**Item X—Clarify Increased Cost or Pricing Data Threshold
(FAR Case 91-96)**

This interim rule amends FAR 15.804-2 to clarify application of the \$500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. This rule implements section 804 of the FY 92 Defense Authorization Act, Public Law 102-190.

Replacement pages: 15-19 and 15-20.

Item XI—Nonmanufacturer Rule (FAR Case 91-50) (Interim Rule)

This interim rule revises FAR 19.001 and 19.102 to add a definition for the term "nonmanufacturer rule", to address Small Business Administration waiver of the nonmanufacturer rule for specific items, and to remove the partial listing of classes for which a waiver has been granted.

Replacement pages: 19-1 thru 19-5.

Item XII—Bundling of Requirements (FAR Case 91-49)

This converts the interim rule on Bundling of Requirements, published in the Federal Register at 56 FR 67132 on December 27, 1991, as Item VI of FAC 90-9, to a final rule with one minor revision, which is the addition of the word "realistic" at FAR 19.202-1(e)(2)(ii). FAR 19.202-1 was revised to require contracting officers to forward proposed acquisitions meeting specified criteria to the SBA's procurement center representatives for review. FAR 19.402 was revised to require that procurement center representatives recommend alternative contracting methods for acquisitions which have increased or consolidated requirements that make it unlikely that small businesses can compete.

Replacement pages: 19-23 and 19-24.

XIII—Part 22 Threshold, Compensation Plans for Professional Employees (FAR Case 90-68)

FAR 22.1101 and 22.1103 are amended to raise the threshold from \$250,000 to \$500,000 for imposition of the requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans for professional employees. The provision at FAR 52.222-45 is removed and its language is combined with the provision at FAR 52.222-46 for purposes of simplification.

Replacement pages: 22-39 and 22-40, TOC, Part 52 (pp. 3 and 4), 52-107, 52-108, and 52-319 and 52-320.

**Item XIV—Determination and Finding of Nonavailability
(FAR Case 92-3)**

FAR 25.108(d)(1) is amended by adding "wire glass" to the list of items that one or more Federal agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Replacement pages: 25-3 and 25-4.

Item XV—Part 25 Thresholds (FAR Case 91-64)

The FAR is revised to remove the threshold in FAR 25.202(b) and change the approval level to allow contracting officers, unless agency regulations prescribes otherwise, to make nonavailability determinations in accordance with FAR 25.202(a)(3) if—the acquisition is made under full and open competition, is synopsisized in accordance with FAR 5.302, and offers for domestic construction materials are not received.

Replacement pages: 25-5 and 25-6.

Item XVI—Severance Pay, Foreign Nationals (FAR Case 90-30)

This final rule removes restrictions on allowability of certain severance payments to foreign nationals, in anticipation of promulgation of the restrictions in the DFARS for DOD use only. This case supersedes FAR case 89-13, which was published in the Federal Register at 54 FR 13022 on March 29, 1989.

Replacement pages: 31-15 and 31-16, 37-3 and 37-4, TOC, Part 52 (pp. 5 thru 8), 52-201 thru 52-204, and 52-329 and 52-330.

Item XVII—GAO Bid Protest Regulations (FAR Case 91-86)

FAR 33.104 is revised to implement the General Accounting Office's revised bid protest procedures which went into effect on April 1, 1991.

Replacement pages: 33-1 thru 33-8.

Item XVIII—Use of Indicia Mail (FAR Case 91-88)

The text at FAR 42.1404-1, Parcel post eligible shipments, and the clause at FAR 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, are revised to clarify the procedure agencies use to obtain authority for contractors to use indicia mail and requires contracting officers to furnish a completed Postal Service Form 3601, Application to Mail Without Affixing Postage Stamps, to contractors. This will make the FAR language consistent with current U.S. Postal Service regulations.

Replacement pages: 42-21 and 42-22, 52-201 thru 52-204.

Item XIX—Thresholds, FAR Part 45 (FAR Case 90-12)

FAR 45.105, 45.106, 45.302-3, 45.307-2, and 45.506 are revised, and the clause at FAR 52.245-18 is amended to raise or delete outdated dollar thresholds and to clarify existing policy.

Replacement pages: 45-1 thru 45-8, 45-17 thru 45-20, and 52-235 and 52-236.

Item XX—Government Property (FAR Case 90-41)

FAR 45.302-3(c) is amended to clarify the Government's policy regarding fee or profit in the acquisition of general purpose components of special tooling and special test equipment. The policy states that the prohibition on profit or fee on the cost of facilities when purchased under other than a facilities contract does not apply to general purpose components of special tooling and special test equipment.

Replacement pages: 45-5 and 45-6.

Item XXI—Inventory Schedules (FAR Case 91-74)

FAR 45.606-1(b) is revised to remove language requiring that the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters. This change is a result of adverse industry comments in response to implementation of the language in FAC 90-4. Development of a new Plant Clearance Automated Reutilization Screening System at the Defense Contract Management Command (DCMC), which eliminated hard-copy inventory schedules for contractors under DOD cognizance, will minimize problems the language was intended to address.

Replacement pages: 45-21 and 45-22.

**Item XXII—Threshold Change to 51.106(b)
(FAR Case 91-55)**

FAR 51.106(b), Title, is revised by raising the threshold listed therein from \$1,000 to \$5,000, in order to be consistent with the threshold listed in FAR 52.245-2, Alternate II, and FAR 52.245-5, Alternate I, to which FAR 51.106(b) refers.

Replacement pages: 51-3 and 51-4.

Item XXIII—Standard Forms 254 and 255, Architect-Engineer Questionnaires (FAR Case 91-69)

Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, have been revised to delete the obsolete definition of Architect-Engineer services on the forms and will reference the definition in FAR Part 36. Corresponding changes are made to the prescriptive language for the forms at FAR 53.236-2(b) and (c).

Replacement pages: 53-5 thru 53-8, and 53-51 thru 53-70.

Item XXIV—Technical Amendments and Corrections

The following items are technical amendments and corrections of errors, omissions or inconsistencies to previously published items in the FAR:

PART 15—CONTRACTING BY NEGOTIATION

15.804-4 [Amended]

2. Section 15.804-4 is amended in the "Certificate of Current Cost or Pricing Data" following paragraph (a) by adding below the word "Firm", "Signature _____".

Replacement pages: 15-23 and 15-24.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.102 [Technical amendment]

3a. Section 19.102 is amended in the table consisting of the industry size standards in Major Group 37 by removing the size standard "500" for "Motor Vehicle Parts and Accessories" and inserting "750" in its place; and in Major Group 55 by removing the size standard "\$11.5" for "Motor Vehicle Dealers (New and Used)" and inserting "\$17.0".

Replacement pages: 19-13 thru 19-16.

3b. In addition to the amendments set forth above, section 19.102 is also amended in footnote number 5 in the "Footnotes" section following the Industry Size Standard Tables by removing the amount "50,000" and inserting "75,000" every time it appears.

Replacement pages: 19-19 and 19-20.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-33 [Technical amendment]

4. Section 31.205-33 is amended in paragraph (f) by removing the reference "31.205-38(g)" and inserting "31.205-38(f)" in its place.

Replacement pages: 31-31 and 31-32.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.215 [Technical amendment]

5. Section 33.215 is amended by adding "(b)" at the end of the reference "33.203".

Replacement pages: 33-7 and 33-8.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.301 [Amendment]

6. Sections 52.301 is amended in the Matrix table at sections 52.214-34 and 52.214-35 by removing from the IBR column the words "No" and inserting "Yes" in their place.

Replacement pages: 52-311 and 52-312.

FAC 90-16 FILING INSTRUCTIONS

Remove Pages

TOC, Part 4
4-3 and 4-4
4-9 and 4-10

5-3 and 5-4

7-1 thru 7-8

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Replacement Pages

TOC, Part 4
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Remove Pages

TOC, Part 52
(pp. 1 thru 8)
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52-41 and 52-42
52-107 and 52-108
52-201 thru 52-204
52-235 and 52-236
52-305 and 52-306
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Replacement Pages

TOC, Part 52
(pp. 1 thru 8)
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PART 4—ADMINISTRATIVE MATTERS

4.602

(1) Agencies covered by the DISP shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with Section VII of the ISR.

(2) Contracting officers in agencies not covered by the DISP shall follow agency procedures.

4.404 Contract clause.

(a) The contracting officer shall insert the clause at 52.204-2, Security Requirements, in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in paragraph (d) below apply.

(b) If a cost contract (see 16.302) for research and development with an educational institution is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a construction or architect-engineer contract where employee identification is required for security reasons is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the contracting agency is not covered by the DISP and has prescribed a clause and alternates that are substantially the same as those at 52.204-2, the contracting officer shall use the agency-prescribed clause as required by agency procedures.

SUBPART 4.5—RESERVED**SUBPART 4.6—CONTRACT REPORTING****4.600 Scope of subpart.**

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Record requirements.

(a) Each executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements exceeding \$25,000.

(b) With respect to each procurement carried out using competitive procedures, agencies shall be able to access from the computer file, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to whom the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Those procurements which result in the submission of a single bid or proposal so that they can be sepa-

rately categorized and designated noncompetitive procurements using competitive procedures.

(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—

(1) The reason under Subpart 6.3 for the use of such procedures; and

(2) The identity of the organization or activity which conducted the procurement.

(d) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.

4.602 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small business concerns and small disadvantaged business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes.

(b) *The FPDS Reporting Manual* provides a complete list of reporting and nonreporting agencies and organizations. This manual (available at no charge from the General Services Administration, Federal Procurement Data Center, 7th & D Streets, SW, Room 5652, Washington, DC 20407, telephone (202) 401-1529, FTS 441-1529, FAX (202) 401-1546) provides the necessary instruction to the data collection point in each agency as to what data are required and how often to provide the data.

(c) Data collection points in each agency report data on SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less), or computer-generated equivalent. Although the SF 279 and SF 281 are not mandatory for use by the agencies, they do provide the mandatory format for submitting data to the FPDS.

(d) The contracting officer shall obtain and report a Contractor Establishment Code for each awardee from information on file or available to the contracting office. The contracting office or other designated agency office shall request a code using the procedures in the FPDS Reporting Manual or in accordance with agency procedures. Requests for codes shall be made by Government

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offices and only for the apparent awardees.

SUBPART 4.7—CONTRACTOR RECORDS RETENTION

4.700 Scope of subpart.

This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors."

4.701 Purpose.

The purpose of this subpart is to generally describe records retention requirements and to allow reductions in the retention period for specific classes of records under prescribed circumstances.

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

- (1) Examination of Records by Comptroller General (52.215-1).
- (2) Audit—Sealed Bidding (52.214-26).
- (3) Audit—Negotiation (52.215-2).

(b) This subpart is not mandatory on Department of Energy contracts for which the Comptroller General allows alternative records retention periods. Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471, et seq.

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available books, records, documents, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705-3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing documents and supporting evidence for a longer period of time than is required in 4.703(a) if—

- (1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or
- (2) The contractor, for its own purposes, retains the foregoing documents and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate pro-

posals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.

(c) Contractors need not retain duplicate copies of records or supporting documents unless they contain significant information not shown on the record copy.

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

4.704 Calculation of retention periods.

(a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.

(b) When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

(c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the entire record series for the longest period prescribed for any category of records.

4.705 Specific retention periods.

The contractor shall retain the records identified in 4.705-1 through 4.705-3 for the periods designated, provided retention is required under 4.702. Records are identified in this subpart in terms of their purpose or use and not by specific name or form number. Although the descriptive identifications may not conform to normal contractor usage or filing practices, these identifications apply to all contractor records that come within the description.

PART 4—ACQUISITION MATTERS

4.901

(c) When the statement is completed, the contracting officer shall ensure that—

(1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and

(2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

4.805 Disposal of contract files.

Agencies shall prescribe procedures for the handling, storing, and disposing of contract files. However, such procedures shall include provisions that the documents specified below shall not be destroyed before the times indicated. If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents covered by these schedules are part of a subject or case file which documents activities different from those covered by the schedules, they should be treated in the same manner as the files of which they are a part.

Document	Retention Period
(a) Records pertaining to exceptions or protests, claims for or against the United States, investigations, cases pending or in litigation, or similar matters.	Until final clearance or settlement, or until the retention period otherwise specified for the document in paragraphs (b) through (n) below is completed, whichever is later.
(b) Signed originals of construction contracts over \$2,000 and all other contracts over \$25,000.	6 years and 3 months after final payment.
(c) Reserved.	
(d) Signed originals of justifications and approvals and determination and findings required by Part 6, and copies of supporting documents and data.	6 years and 3 months after final payment.
(e) Signed originals of construction contracts of \$2,000 or less and all other contracts of \$25,000 or less.	3 years after final payment.
(f) All unsuccessful offers or quotations that pertain to contracts below the appropriate small purchase limitation in Part 13.	Retain 1 year after date of award or until final payment, whichever is later; but if the contracting officer determines that the files have future value to the Government, retain as long as advisable.

Document	Retention Period
(g) Contract status (progressing), expediting, and production surveillance records.	6 months after final payment.
(h) Rejected engineering change proposals.	6 months after final payment.
(i) Labor compliance records, including equal employment opportunity records.	3 years after final payment.
(j) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(k) Records or documents other than those in paragraphs 4.805(a)-(j) above pertaining to contracts below the appropriate small purchase limitation in Part 13.	1 year after final payment.
(l) Records or documents other than those in paragraphs 4.805(a)-(k) above pertaining to contracts above the appropriate small purchase limitation in Part 13.	6 years and 3 months after final payment.
(m) Files for cancelled solicitations (see 4.801(c)(1)).	5 years after cancellation.
(n) Solicited and unsolicited unsuccessful offers and quotations above the appropriate small purchase limitation in Part 13:	
(1) When filed separately from contract case files.	Until contract completion date.
(2) When filed with contract case files.	6 years and 3 months after final payment.

SUBPART 4.9—INFORMATION REPORTING TO THE INTERNAL REVENUE SERVICE**4.900 Scope of subpart.**

This subpart provides policies and procedures applicable to reporting contract and payment information to the Internal Revenue Service (IRS).

4.901 Definitions.

“Common parent,” as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Corporate status,” as used in this subpart, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (*e.g.*, sole proprietorship or partnership), or a corporation providing medical and health care services.

“Taxpayer Identification Number (TIN),” as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

4.902 Contract information.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by \$50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of \$25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and the Taxpayer Identification Number (TIN) of contractor;

(2) Name and TIN of common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see subpart 4.6 and implementing instructions).

4.903 Payment information.

(a) 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Federal Government agencies, to report to the IRS payments made to certain contractors.

(b) The following payments are exempt from this reporting requirement:

(1) Payments to corporations. However, payments to

corporations providing medical and health care services or engaged in the billing and collecting of payments for such services are not exempted.

(2) Payments for bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(3) Payments of income required to be reported on an IRS Form W-2 (*e.g.*, contracts for personal services).

(4) Payments to a hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(5) Payments to a hospital or extended care facility owned and operated by the United States, a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(6) Payments for any contract with a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(c) The following information is required to provide reports to the IRS:

(1) Name, address, and TIN of contractor.

(2) Corporate status (see 4.901).

(d) Transmit to paying offices the information specified in 4.203.

4.904 Solicitation provision.

The contracting officer shall insert the provision at 52.204-3, Taxpayer Identification, in solicitations, unless the TIN of each offeror has previously been obtained and is known.

(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 6.003) and publication of any notice complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see 6.302-1(a)(2)(i));

(9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action; or

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see Subpart 25.4).

(b) The head of the agency determines in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

5.203 Publicizing and response time.

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

(a) A notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.

(b) Agencies shall allow at least 30 days' response time for receipt of bids or proposals from the date of issuance of a solicitation.

(c) Agencies shall allow at least 30 days' response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.

(d) Agencies shall allow at least 45 days' response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions category-

ized as research and development.

(e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these time frames. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the contract action under the authority of 5.202(a)(2).

5.204 Presolicitation notices.

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.302). Synopsisizing is still required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may publish in the CBD, advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices shall be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices shall be titled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers shall synopsisize all subsequent solicitations for R&D contracts, including those resulting from a previously synopsisized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see Part 35) or before changing its basic purpose and mission, the sponsor shall place at least three notices over a 90-day period in the (FAC 90-16) 5-3

Commerce Business Daily and the Federal Register, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice shall indicate the scope and nature of the effort to be performed and request comments. Notice is not required where action is required by law.

(c) *Special notices.* Contracting officers may publish in the CBD special notices of procurement matters such as business fairs, long-range procurement estimates, pre-bid/pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review. Special notices shall be transmitted to the CBD in accordance with 5.207.

(1) *General.* Use conventional typing with upper and lower case letters, standard punctuation, and commonly used abbreviations.

(2) *Spacing.* Begin lines in the text, except paragraph beginnings, flush with the left margin. Use double-spaced lines. Begin paragraphs five spaces from the left margin.

(3) *Contracting office and address.* Begin the name, address, and telephone number of the contracting office on the first line of the text. Do not abbreviate except for names of states. The address shall include an attention phrase that identifies the person(s) to contact for further information.

(4) *Description of the matter being announced.* Include a clear, complete description of the matter to be published.

(d) *Architect-engineering services.* Contracting officers shall publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, synopses each proposed contract action for which the total fee (including phases and options) is expected to exceed the small purchase limitation in 13.000. Reference shall be made to the appropriate CBD Numbered Note.

(2) When the total fee is expected to exceed \$10,000 (\$5,000 for Defense activities), but not exceed \$25,000, the contracting officer shall comply with 5.101(a)(2). When the contract action is not required to be synopsized under subparagraph (d)(1) of this section, the contracting officer shall display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

(e) *Effort to locate commercial sources under OMB Circular A-76.* When determining the availability of commercial sources under the procedures prescribed in Subpart 7.3 and OMB Circular A-76, the contracting officer shall not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement in the CBD at least three times in a 90 calendar-day period, with a minimum of

30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two publications in the CBD in a 30 calendar-day period, with a minimum of 15 calendar days between each.

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under Subpart 19.8, the contracting officer shall transmit a synopsis of the proposed contract action to the CBD in accordance with 5.207. The synopsis may be transmitted to the CBD concurrent with submission of the agency offering (see 19.804-2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the Standard Industrial Classification (SIC) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental or transitional stage; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

5.206 Publicizing subcontract opportunities.

Prime contractors may use the CBD to publicize subcontracting opportunities stemming from receipt of a Government contract. The CBD can be used to seek competition for subcontracts, to increase participation by small, small disadvantaged, and women-owned business firms, and to meet established subcontracting plan goals. Synopses of subcontract opportunities should be prepared and submitted in accordance with 5.207.

5.207 Preparation and transmittal of synopses.

(a) *Transmittal.* Contracting officers shall transmit synopses of actions identified under 5.101 to the Commerce Business Daily by the most expeditious and reliable means available.

(1) *Electronic transmission.* All synopses transmitted by electronic means shall be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.

(2) *Hard copy transmission.* When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to:

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, IL 60680

PART 7

ACQUISITION PLANNING

7.000 Scope of part.

This part prescribes policies and procedures for—

- (a) Developing acquisition plans;
- (b) Determining whether to use commercial or Government resources for acquisition of supplies or services; and
- (c) Deciding whether it is more economical to lease equipment rather than purchase it.

SUBPART 7.1—ACQUISITION PLANS

7.101 Definitions.

“Acquisition planning” means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

“Acquisition streamlining,” as used in this subpart, means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

“Design-to-cost” is a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

“Life-cycle cost” means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

“Market survey” means attempts to ascertain whether other qualified sources capable of satisfying the Government’s requirements exist. This testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, and the results of any

market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (e.g., technical/scientific journals, or the Commerce Business Daily), or solicitations for information or planning purposes. (See 15.405.)

“Planner,” as used in this subpart, means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys for all acquisitions in order to promote and provide for full and open competition (see Part 6), or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)). This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

7.103 Agency-head responsibilities.

The agency head or a designee shall prescribe procedures for—

(a) Ensuring that in no case is a contract entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available to the agency for acquisitions (10 U.S.C. 2304(f)(5) and 41 U.S.C. 253f(5)(A)).

(b) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2305(a)(1)(A) and 41 U.S.C. 253a(a)(1)). (See Part 6 and 10.002.)

(c) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared.

(d) Writing plans either on a system basis or on an individual contract basis, depending upon the acquisition.

(e) Ensuring that the principles of this subpart are used, as appropriate, for those acquisitions that do not require a written plan as well as for those that do.

(f) Designating planners for acquisitions.

(g) Reviewing and approving acquisition plans and revisions to these plans.

(h) Establishing criteria and thresholds at which design-to-cost and life-cycle-cost techniques will be used.

(i) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(j) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.

(k) Assuring that the contracting officer, prior to contracting, reviews:

(1) The acquisition history of the supplies and services; and

(2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

(l) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see 10.002(c)) and agency metric plans and guidelines.

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in those acquisitions. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

(b) Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the planner should consult requirements and logistics personnel who determine type, quality, quantity, and delivery requirements.

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition, the plan shall also be coordinated with the cognizant competition advocate.

7.105 Contents of written acquisition plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see subparagraph (b)(18) below). The plan shall address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner shall follow the applicable instructions in paragraphs (a) and (b) below, together with the agency's implementing procedures.

(a) *Acquisition background and objectives.* (1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives and any related in-house effort.

(2) *Applicable conditions.* State all significant conditions affecting the acquisition, such as (i) requirements for compatibility with existing or future systems or programs and (ii) any known cost, schedule, and capability or performance constraints.

(3) *Cost.* Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) *Life-cycle cost.* Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) *Design-to-cost.* Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

(iii) *Application of should-cost.* Describe the application of should-cost analysis to the acquisition (see 15.810).

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or services being acquired and state how they are related to the need.

(5) *Delivery or performance-period requirements.* Describe the basis for establishing delivery or performance-period requirements (see Subpart 12.1). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

(6) *Trade-offs.* Discuss the expected consequences of trade-offs among the various cost, capability or perfor-

mance, and schedule goals.

(7) *Risks*. Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(8) *Acquisition streamlining*. If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to (i) encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements; (ii) select and tailor only the necessary and cost-effective requirements; and (iii) state the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory (see 10.002(c)).

(b) *Plan of action*. (1) *Sources*. Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies and services (see Part 8). Include consideration of small business, small disadvantaged business, and labor surplus area concerns (see Parts 19 and 20). If the acquisition or a part of it is for commercial or commercial-type products (see Part 11), address the results of market research and analysis and indicate their impact on the various elements of the plan. If the acquisition or part of it is for other than commercial or commercial-type products, address the extent and results of the market survey conducted or the reasons one was not or will not be conducted.

(2) *Competition*. (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition.

Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Source-selection procedures*. Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.6).

(4) *Contracting considerations*. For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see Subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations.

(5) *Budgeting and funding*. Describe how budget estimates were derived and discuss the schedule for obtaining adequate funds at the time when they are required (see Subpart 32.7).

(6) *Product descriptions*. In accordance with Part 10, explain the choice of product description types to be used in the acquisition.

(7) *Priorities, allocations, and allotments*. When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see Subpart 12.3).

(8) *Contractor versus Government performance*. Address the consideration given to OMB Circular No. A-76 (see Subpart 7.3).

(9) *Management information requirements*. Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(10) *Make or buy*. Discuss any consideration given to make-or-buy programs (see Subpart 15.7).

(11) *Test and evaluation*. To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. If concurrency is planned, discuss the extent of testing to be accomplished before production release.

(12) *Logistics considerations*. Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial products (see Part 11);

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of

warranties (see Part 46); and

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see Part 27).

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

(13) *Government-furnished property.* Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see Part 45).

(14) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

(15) *Environmental considerations.* Discuss environmental issues associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

(16) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4).

(17) *Other considerations.* Discuss, as applicable, energy conservation measures, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere.

(18) *Milestones for the acquisition cycle.* Address the following steps and any others appropriate:

Acquisition plan approval.

Statement of work.

Specifications.

Data requirements.

Completion of acquisition-package preparation.

Purchase request.

Justification and approval for other than full and open competition where applicable and/or any required D&F approval.

Issuance of synopsis.

Issuance of solicitation.

Evaluation of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

(19) *Identification of participants in acquisition*

plan preparation. List the individuals who participated in preparing the acquisition plan, giving contact information for each.

7.106 Additional requirements for major systems.

(a) In planning for the solicitation of a major system (see Part 34) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

(1) Items which are currently available within the supply system of the agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system's service life.

(b) In planning for the solicitation of a major system (see Part 34) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

(1) Proposals to provide the Government the right to use technical data to be provided under the contract for competitive future acquisitions, together with the cost to the Government, if any, of acquiring such technical data and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future acquisitions.

(c) In determining whether to apply paragraphs (a) and (b) above, planners shall consider the purposes for which the system is being acquired and the technology necessary to meet the system's required capabilities. If such proposals are required, the contracting officer shall consider them in evaluating competing offers. In noncompetitive awards, the factors in paragraphs (a) and (b) above, may be considered by the contracting officer as objectives in negotiating the contract.

SUBPART 7.2—PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased.

PART 7—ACQUISITION PLANNING

7.302

7.201 Reserved.**7.202 Policy.**

(a) Agencies are required by 10 U.S.C. 2384(a) and 41 U.S.C. 253f to procure supplies in such quantity as (1) will result in the total cost and unit cost most advantageous to the Government, where practicable, and (2) does not exceed the quantity reasonably expected to be required by the agency.

(b) Each solicitation for a contract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation (1) to state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Government, and (2) if applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

7.203 Solicitation provision.

Contracting officers shall insert the provision at 52.207-4, Economic Purchase Quantity—Supplies, in solicitations for supplies. The provision need not be inserted if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that (a) the Government already has the data, (b) the data is otherwise readily available, or (c) it is impracticable for the Government to vary its future requirements.

7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at 52.207-4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding

with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

SUBPART 7.3—CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A-76 (Revised) (the Circular), Performance of Commercial Activities, and (b) the Supplement to OMB Circular No. A-76.

7.301 Policy.

The Circular provides that it is the policy of the Government to (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel, and (b) give appropriate consideration to relative cost in deciding between Government performance and performance under contract. In comparing the costs of Government and contractor performance, the Circular provides that agencies shall base the contractor's cost of performance on firm offers.

7.302 General.

The Circular and the Supplement—

(a) Prescribe the overall policies and detailed procedures required of all agencies in making cost comparisons between contractor and Government performance. In making cost comparisons, agencies shall—

(1) Prepare an estimate of the cost of Government performance based on the same work statement and level of performance as apply to offerors; and

(2) Compare the total cost of Government performance to the total cost of contracting with the potential successful offeror.

(b) Provide that solicitations and synopses of the solicitations issued to obtain offers for comparison purposes shall state that they will not result in a contract if Government performance is determined to be more advantageous (see the solicitation provisions at 52.207-1 and 52.207-2);

(c) Provide that each cost comparison shall be reviewed by an activity independent of the activity which prepared the cost analysis to ensure conformance with the instruc-

tions in the Supplement; and

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies when the full-time equivalent Government employees involved are fewer than those specified in law, the Circular, and implementing agency guidance. Cost comparisons may be conducted in these instances if there is reason to believe that commercial prices are unreasonable.

7.303 Determining availability of private commercial sources.

(a) During acquisition planning reviews, contracting officers shall assist in identifying private commercial sources.

(b) In making all reasonable efforts to identify such sources, the contracting officer shall assist in—

(1) Synopsizing the requirement in the Commerce Business Daily until a reasonable number of potential sources are identified. If necessary, synopsis shall be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them); and

(2) Requesting assistance from the Small Business Administration, the Department of Commerce, and the General Services Administration.

(3) If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled.

7.304 Procedures.

(a) *Work statement.* When private commercial sources are available and a cost comparison is required, the Government's functional managers responsible for the comparison or another group shall prepare a comprehensive performance work statement. The work statement must—

(1) Accurately reflect the actual Government requirement, stating adequately *what* is to be done without prescribing *how* it is to be done;

(2) Include performance standards that can be used to ensure a comparable level of performance for both Government and contractor and a common basis for evaluation; and

(3) Be reviewed by the contracting officer to ensure that it is adequate and appropriate to serve as a basis for solicitation and award.

(b) *Cost estimate.* The agency personnel who develop the cost estimate for Government performance—

(1) Enter on a cost comparison form (see Part IV of the Supplement) the cost estimate and the other elements required to accomplish a cost comparison;

(2) Review the estimate for completeness and accuracy

and have the estimate audited; and

(3) Submit to the contracting officer the completed form and all necessary detailed supporting data in a sealed, dated envelope not later than the time established for receipt of initial proposals or bid opening. If more time is needed to develop the Government's cost estimate, the contracting officer shall amend the opening date of the solicitation.

(c) *Solicitation.* (1) The contracting officer shall issue a solicitation based on the performance work statement prepared in accordance with paragraph (a) of this section. Prepriced option prices in existing contracts will not be used instead of issuing a new solicitation when conducting a cost comparison under a new start.

(2) Firm offers shall be required for the period covered by the cost comparison, by using (i) a base contract period and any applicable priced options to total the amount of time represented by the cost estimate for Government performance (see Subpart 17.2), or (ii) a multiyear contract when appropriate (see Subpart 17.1).

(3) Solicitations shall not, unless a proper determination to the contrary is made, limit award to U.S. offerors.

(d) *Integrity of cost comparison.* (1) The confidentiality of (i) the cost estimate for Government performance and (ii) the bids in sealed-bid cost comparisons shall be maintained until the time of bid opening, to ensure that they are completely independent.

(2) For cost comparisons conducted using the results of negotiation procedures, confidentiality and independence shall be maintained until after negotiations are completed and the most advantageous offer has been selected.

(3) Personnel who have knowledge of the cost figures in the cost estimate for Government performance shall not participate in the offer-evaluation process unless the contract file is adequately documented to show that no other qualified personnel were available.

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when contracting by sealed bidding, insert in solicitations issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-1, Notice of Cost Comparison (Sealed-Bid).

(b) The contracting officer shall, when contracting by negotiation, insert in requests for proposals issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-2, Notice of Cost Comparison (Negotiated).

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost

PART 7—ACQUISITION PLANNING

7.306

comparison is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

7.306 Evaluation.

The evaluation procedure to be followed after the contracting officer receives the cost estimate for Government performance (see 7.304(b)) and the responses to the solicitation differs from conventional contracting procedures as follows:

(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall—

(i) Open the sealed envelope containing the cost comparison form on which the cost estimate for Government performance has been entered;

(ii) Enter on the cost comparison form the price of the apparent low bidder;

(iii) Announce the result, based on the initial cost comparison form, stating that this result is subject to required agency processing, including evaluation for responsiveness and responsibility, completion and audit of the cost comparison form (see Supplement, Part IV, Illustration 1), and resolution of any requests for review under the appeals procedure (see 7.307);

(iv) State that no final determination for performance by the Government or under contract will be made during the public review period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex; the public review period begins when the documents identified in (v) below are available to interested parties), plus any additional time required for the appeals procedure; and

(v) Make available for this public review by interested parties the abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance.

(2) After evaluation of bids (see Subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The contracting officer shall make the completed and approved cost comparison analysis available to interested parties upon request.

(b) *Negotiation.* The contracting officer shall receive

proposals, evaluate them (see Subpart 15.6), conduct negotiations, and select the most advantageous proposal in accordance with normal contracting procedures (see Part 15). The contracting officer shall, before public announcement, open the sealed estimate in the presence of the preparer, enter the amount of the most advantageous proposal on the cost comparison form, and return the form to the preparer of the cost estimate for Government performance for completion. The preparer shall give due consideration to all types of costs which could add or subtract from the cost of either mode of performance.

(1) If the result of the cost comparison favors performance under contract and the responsible agency official approves the result, the contracting officer shall award a contract in accordance with agency procedures. Concurrently with the award, the contracting officer shall publicly—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost comparison form and detailed supporting data are available for review;

(iii) Announce the contractor's name; and

(iv) Advise interested parties that contractor preparations for performance are conditioned upon completion of the public review period specified in the solicitation plus any additional period required by the appeals procedure.

(2) If the result of the cost comparison favors Government performance, the contracting officer shall—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost comparison form and detailed supporting data relative to the Government cost estimate are available for public review (see paragraph (b)(3) of this section); and

(iii) Announce the price of the offer most advantageous to the Government.

(3) The public review period shall begin with the contracting officer's announcement of the cost comparison result and availability of the cost comparison forms and detailed supporting data to interested parties. The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. The contracting officer shall then, in the case of subparagraph (b)(1) of this section, give the contractor notice to commence or cancel the contract as appropriate or, in the case of subpara-

graph (b)(2) of this section, cancel the solicitation or award the contract, as appropriate.

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at a higher level than, the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

(b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in 14.407-8, Protests against award. Directly affected parties may request review of any discrepancy in the cost comparison. Any such requests shall be made in writing to the contracting officer, who shall forward them in accordance with agency procedures. Such requests shall be considered only if based on specific objections and received within the public review period stated in the solicitation.

SUBPART 7.4—EQUIPMENT LEASE OR PURCHASE

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

- (1) Estimated length of the period the equipment is to be used and the extent of use within that period.
- (2) Financial and operating advantages of alternative types and makes of equipment.
- (3) Cumulative rental payments for the estimated period of use.
- (4) Net purchase price.
- (5) Transportation and installation costs.
- (6) Maintenance and other service costs.
- (7) Potential obsolescence of the equipment because of imminent technological improvements.

(b) The following additional factors should be considered, as appropriate, depending on the type, cost, complexi-

ty, and estimated period of use of the equipment:

- (1) Availability of purchase options.
- (2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.
- (3) Trade-in or salvage value.
- (4) Imputed interest.
- (5) Availability of a servicing capability, especially for highly complex equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

- (i) Require immediate use of equipment to meet program or system goals; but
- (ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

- (1) Pending price adjustments to Federal Supply Schedule contracts;
- (2) Recent or imminent technological developments;
- (3) New techniques; and
- (4) Industry or market trends.

(b) Agencies may request information from the following GSA offices:

(1) Office of Information Resources Management Policy (KMA), Washington, DC 20405, for information on automatic data processing and telecommunications equipment acquisitions.

(2) Office of Commodity Management (FC), Washington, DC 20406, for information on other types of equipment.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.

8.001 Priorities for use of Government supply sources.

(a) Except as required by 8.002, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority as prescribed in 41 CFR 101-26.107:

(1) *Supplies.*

- (i) Agency inventories;
- (ii) Excess from other agencies (see Subpart 8.1);
- (iii) Federal Prison Industries, Inc. (see Subpart 8.6);
- (iv) Procurement lists of supplies available from the Committee for Purchase from the Blind and Other Severely Handicapped (see Subpart 8.7);
- (v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points;
- (vi) Mandatory Federal Supply Schedules (see Subpart 8.4);
- (vii) Optional use Federal Supply Schedules (see Subpart 8.4); and
- (viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.* (i) Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped (see Subpart 8.7);

(ii) Mandatory Federal Supply Schedules (see Subpart 8.4) and mandatory GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1);

(iii) Optional use Federal Supply Schedules (see Subpart 8.4) and optional use GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1); and

(iv) Federal Prison Industries, Inc. (see Subpart

8.6), or commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) may be used as prescribed in 41 CFR 101-26.301 and in an unusual and compelling urgency as prescribed in 6.302-2 and in 41 CFR 101-25.101-5.

8.002 Use of other Government supply sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

- (a) Jewel bearings and related items (see Subpart 8.2);
- (b) Public utility services (see Subpart 8.3);
- (c) Printing and related supplies (see Subpart 8.8);
- (d) Automatic data processing and telecommunications acquisitions (see Part 39);
- (e) Leased motor vehicles (see Subpart 8.11);
- (f) Strategic and critical materials (e.g., metals and ores) from inventories exceeding National Defense Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Building #4, Suite 100, Arlington, VA 22202); and
- (g) Helium (see 30 CFR Parts 601 and 602).

SUBPART 8.1—EXCESS PERSONAL PROPERTY

8.101 Definition.

“Excess personal property” means any personal property (see 45.601) under the control of a Federal agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

8.102 Policy.

When it is practicable to do so, agencies shall use excess personal property as the first source of supply in fulfilling their requirements and those of their cost-reimbursement contractors. Accordingly, agencies shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating contracting action.

8.103 Information on available excess personal property.

Information regarding the availability of excess personal

property can be obtained through—

(a) Review of excess personal property catalogs and bulletins issued by the General Services Administration (GSA);

(b) Personal contact with GSA or the activity holding the property;

(c) Submission of supply requirements to the regional offices of GSA (GSA Form 1539, Request for Excess Personal Property, is available for this purpose); and

(d) Examination and inspection of reports and samples of excess personal property in GSA regional offices.

8.104 Obtaining nonreportable property.

GSA will assist agencies in meeting their requirements for supplies of the types excepted from reporting as excess by the Federal Property Management Regulations (41 CFR 101-43.312). Federal agencies requiring such supplies should contact the appropriate GSA regional office.

SUBPART 8.2—JEWEL BEARINGS AND RELATED ITEMS

8.201 Definitions.

“Jewel bearing” means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

“Plant,” as used in this subpart, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota.

“Related item,” as used in this subpart, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (a) is made from material produced by the Verneuil flame fusion process, (b) has a geometric shape up to a maximum of 1 inch in any dimension, (c) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (d) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

8.202 Policy.

Except as otherwise provided in this subpart, (a) jewel bearings shall be acquired from the Plant and (b) related items shall be acquired either from domestic manufacturers or from the Plant.

8.203 Procedures.

8.203-1 Contract clause and solicitation provision.

(a) The contracting officer shall insert the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in paragraph (b) below, except for—

(1) Small purchases under Part 13;

(2) Items purchased and used outside the United States, its possessions, and Puerto Rico; or

(3) Items that the contracting officer knows do not contain jewel bearings or related items (the contractor's certification required by 8.203-2 does not in itself satisfy this requirement).

(b) Federal supply classes and groups:

(1)	Federal Supply Classes
6605	Navigational Instruments
6610	Flight Instruments
6615	Autopilot Mechanisms and Airborne Gyro Components
6620	Engine Instruments
6625	Electrical- and Electronic-Properties Measuring and Testing Instruments
6630	Chemical-Analysis Instruments
6635	Physical-Properties Testing Equipment
6636	Environmental Chambers and Related Equipment
6640	Laboratory Equipment and Supplies
6645	Time-Measuring Instruments
6650	Optical Instruments
6655	Geophysical and Astronomical Instruments
6660	Meteorological Instruments and Apparatus
6665	Hazard-Detecting Instruments and Apparatus
6670	Scales and Balances
6675	Drafting, Surveying, and Mapping Instruments
6680	Liquid- and Gas-Flow, Liquid-Level, and Mechanical-Motion Measuring Instruments
6685	Pressure-, Temperature-, and Humidity-Measuring and Controlling Instruments
6695	Combination and Miscellaneous Instruments
(2)	Federal Supply Groups
12	Fire-Control Equipment
14	Guided Missiles
15	Aircraft, Airframe Structural Components
16	Aircraft Components and Accessories
18	Space Vehicles
23	Motor Vehicles and Motorcycles
25	Vehicular Equipment Components

debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of “ineligible” in 9.403); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405(b)), it does not prescribe policies and procedures governing declarations of ineligibility.

9.401 Applicability.

This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549. Such exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs of the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.403 Definitions.

“Adequate evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Affiliates.” Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees

as the contractor that was debarred, suspended, or proposed for debarment.

“Agency,” as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

“Civil judgment” means a judgment or finding of a civil offense by any court of competent jurisdiction.

“Contractor,” as used in this subpart, means any individual or other legal entity that—

(a) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

“Debarment,” as used in this subpart, means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is “debarred.”

“Debarring official” means (a) an agency head or (b) a designee authorized by the agency head to impose debarment.

“Indictment” means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

“Ineligible,” as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Legal proceedings” means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

“Parties Excluded from Procurement Programs,” formerly referred to as the Consolidated List of Debarred, Suspended, and Ineligible Contractors, means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement

Programs is contained within the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means (a) an agency head or (b) a designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

9.404 Parties Excluded from Procurement Programs.

(a) The General Services Administration (GSA) shall—

(1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revise and distribute the list and issue supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Include in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The list entitled Parties Excluded from Procurement Programs shall indicate—

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name of the agency or other authority taking the action;

(3) The cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) The effect of the action;

(5) The termination date for each listing;

(6) The DUNS No.; and

(7) The name and telephone number of the point of contact for the action.

(c) Each agency shall—

(1) Notify GSA of the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of the names and addresses of agency organizations that are to receive the consolidated list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the Parties Excluded from Procurement Programs, including internal distribution thereof, to ensure that the

agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the Parties Excluded from Procurement Programs, except as otherwise provided in this subpart; and

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(d) Information on the list of Parties Excluded from Procurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe to the list through their organization's printing and distribution office.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

(2) The electronic version is updated daily and provides access to the names of firms and individuals on the list by using an asynchronous ASCII terminal (e.g., a word processor or microcomputer). Users can access the system 24 hours a day, 7 days a week using FTS 2000, or commercial telephone lines and the equipment described in the user's manual. Aside from the normal costs of local or long-distance telephone calls, access is free of charge to the user. To obtain a copy of the user's manual for accessing the system, contact GSA at (202) 501-4740.

(3) A telephone inquiry service to answer general questions about entries on the list of Parties Excluded from Procurement Programs is also available by calling GSA, at (202) 501-0688. The inquiry will be answered within one working day.

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or designee determines that there is a compelling reason for such action (see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for

debarment are excluded from acting as individual sureties (see Part 28).

(d)(1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency's head or designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the acquiring agency's head or designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

9.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the acquiring agency's head or a designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

9.405-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the acquiring agency's head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclu-

sion on the list of Parties Excluded from Procurement Programs (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(c) The contractor's compliance with the requirements of 52.209-6 will be reviewed during Contractor Purchasing System Reviews (see Subpart 44.3).

9.406 Debarment.

9.406-1 General.

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or admin-

istrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 9.406-3(c)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

9.406-2 Causes for debarment.

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:

(a) The debarring official may debar a contractor for a

conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(i) Willful failure to perform in accordance with the terms of one or more contracts; or

(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(2) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—

(i) The offeror's submission of a false certification;

(ii) The contractor's failure to comply with its certification; or

(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings

PART 13

SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000.

SUBPART 13.1—GENERAL

13.101 Definitions.

“Bulk funding” means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

“Delivery Order,” as used in this part, means an order for supplies or services placed against an established contract or with Government sources of supply.

“Purchase Order,” as used in this part, means an offer by the Government to buy certain supplies or services and construction from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit. The Optional Form 347, Order for Supplies or Services, is designed for this purpose.

“Small purchase” means an acquisition of supplies, services, and construction in the amount of \$25,000 or less using the procedures prescribed in this part.

“Small purchase procedures” means the methods prescribed in this part for making small purchases using imprest funds, purchase orders, and blanket purchase agreements. The term excludes—

(a) Requirements obtained through the use of Delivery Orders;

(b) Contracts with the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (see Part 19); and

(c) Contracts awarded through (1) sealed bidding (see Part 14), (2) the negotiation procedures in Part 15, or (3) small business or labor surplus area set-asides (see Parts 19 and 20), other than small business-small purchase set-asides prescribed in 13.105.

13.102 Purpose.

The purpose of this part is to prescribe simplified procedures for small purchases in order to (1) reduce administrative costs and (2) improve opportunities for small business concerns and small disadvantaged business concerns to obtain a fair proportion of Government contracts.

13.103 Policy.

(a) The procedures prescribed in this part shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the small purchase limitation unless requirements can be met by using required sources of supply (see Part 8).

(b) Small purchase procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the small purchase limitation even though resulting awards do not exceed that limit. Requirements aggregating more than the small purchase dollar limitation shall not be broken down into several purchases that are less than the limit merely to permit negotiation under small purchase procedures.

(c) Small purchase procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services by contract (see 37.104).

13.104 Procedures.

(a) Contracting officers shall use the small purchase procedure that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an “all-or-none” basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under small purchase procedures as prescribed in 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments for small purchases (see Subpart 25.3).

(f) This part does not preclude using (1) Standard Form

1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)) or (2) negotiated two-party contracts (see Part 15), for acquisitions not exceeding the small purchase limitation.

(g) For proposed purchases covered by this part, see 5.101(a)(2) for public display requirements.

(h) When a quotation, oral or written, is to be rejected because a small business firm is determined to be not responsible (see Subpart 9.1), see 19.6 with respect to Certificates of Competency.

13.105 Small business-small purchase set-asides.

(a) Except as provided in paragraphs (b), (c), and (d) below, each acquisition of supplies or services that has an anticipated dollar value of \$25,000 or less and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This shall be accomplished by using the category of set-asides established by Pub. L. 95-507, specifically for small purchases, identified as small business-small purchase set-asides established by Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95-507).

(b) The requirements of this section 13.105 apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000(b)). Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

(c) The requirement for small business-small purchase set-asides does not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and mandatory multiple-award Federal Supply Schedule contracts.

(d)(1) Each written solicitation under a small business-small purchase set-aside shall contain the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (or at least one if the purchase does not exceed the dollar threshold, prescribed in 13.106, for obtaining competition and price reasonableness) that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the

SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

(3) If the contracting officer proceeds with the small business-small purchase set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106(c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the small business-small purchase set-aside and complete the purchase on an unrestricted basis.

(4) When proceeding under 13.105(d)(1) or (3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106(b)(4)).

(5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.

(e) Policy concerning nonmanufacturers under small business-small purchase set-asides is prescribed in 19.501(f)(2).

13.106 Competition and price reasonableness.

(a) *Purchases not over 10 percent of the small purchase limitation.* (1) Purchases not exceeding this limit may be made without securing competitive quotations if the contracting officer considers the prices to be reasonable.

(2) Such purchases shall be distributed equitably among qualified suppliers.

(3) If practical, a quotation shall be solicited from other than the previous supplier before placing a repeat order.

(4) The administrative cost of verifying the reasonableness of the price of purchases not exceeding 10 percent of the small purchase limitation may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need be taken only when—

(i) The buyer or contracting officer suspects or has information (e.g., comparison to previous prices paid or personal knowledge of the item involved) to indicate that the price may not be reasonable; or

(ii) Purchasing an item for which no comparable pricing information is readily available (e.g., an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).

(b) *Purchases over 10 percent of the small purchase limitation.* (1) Contracting officers shall solicit quotations from a reasonable number of sources to promote competi-

PART 15

CONTRACTING BY NEGOTIATION

15.000 Scope of part.

This part prescribes policies and procedures governing contracting for supplies and services by negotiation.

SUBPART 15.1—GENERAL REQUIREMENTS FOR NEGOTIATION

15.100 Scope of subpart.

This subpart covers general requirements regarding negotiated contracts. Detailed and specific requirements appear throughout this regulation.

15.101 Definition.

“Negotiation” means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract (see 14.101).

15.102 General.

Negotiation is a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract. Bargaining—in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take—may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

15.103 Converting from sealed bidding to negotiation procedures.

When the agency head has determined, in accordance with 14.404-1(e)(1), that an invitation for bids is to be cancelled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate and make award without issuing a new solicitation subject to the following conditions—

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the invitation for bids;

(b) The negotiated price is the lowest negotiated price offered by any responsible bidder; and

(c) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the invitation for bids. However, this paragraph

(c) does not apply if the invitation was canceled and all bids were rejected for the reason stated in 14.404-1(c)(8).

15.104 Reserved.

15.105 Reserved.

15.106 Contract clauses.

15.106-1 Examination of Records clause.

(a) This subsection implements 10 U.S.C. 2313(b) and (c) and 41 U.S.C. 254(c).

(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-1, Examination of Records by Comptroller General, in solicitations and contracts, except when—

(1) Making small purchases (see Part 13);

(2) Contracting for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge; or

(3) Making contracts with foreign contractors for which the agency head authorizes omission under Subpart 25.9.

(c) In connection with administration of the clause in research and development contracts with nonprofit institutions, including subcontracts under these contracts, the Comptroller General does not require original documentation of transportation costs (exclusive of travel).

15.106-2 Audit—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), 10 U.S.C. 2306(f), and OMB Circular No. A-133.

(b) The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-2, Audit—Negotiation, in solicitations and contracts, unless the acquisition is a small purchase under Part 13. In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

SUBPART 15.2—RESERVED

SUBPART 15.3—RESERVED

SUBPART 15.4—SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS

15.400 Scope of subpart.

This subpart prescribes policies and procedures for (a) preparing and issuing requests for proposals (RFP's) and requests for quotations (RFQ's) and (b) receiving proposals and quotations.

15.401 Applicability.

This subpart applies to solicitations issued when contracting by negotiation, except—

- (a) Small purchases (see Part 13); and
- (b) Two-step sealed bidding (see Subpart 14.5).

15.402 General.

(a) Requests for proposals (RFP's) or requests for quotations (RFQ's) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals or quotations from them. Except as permitted by paragraph (f) below, contracting officers shall issue written solicitations. Solicitations shall contain the information necessary to enable prospective contractors to prepare proposals or quotations properly. Solicitation provisions and contract clauses may be incorporated into solicitations and contracts by reference, when authorized by Subpart 52.1.

(b) Contracting officers shall furnish identical information concerning a proposed acquisition to all prospective contractors. Government personnel shall not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor (but see 5.404, 15.404, and 15.405).

(c) Except for solicitations for information or planning purposes (see paragraph (e) below and 15.405), contracting officers shall solicit proposals or quotations only when there is a definite intention to award a contract. Subpart 7.3 provides additional instructions for solicitations involving cost comparisons between Government and contractor performance.

(d) A proposal received in response to an RFP is an offer that can be accepted by the Government to create a binding contract, either following negotiations or, when authorized by 15.610, without discussion. Contracting officers should normally issue RFP's when they consider it reasonable to expect prospective contractors to respond with offers, even though they anticipate negotiations after receipt of offers. An RFP shall not be used for a solicitation for information or planning purposes. Solicitations involving cost comparisons between Government and contractor performance (see 7.302(b)) are not for information or planning purposes.

(e) A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract. It is informational in character. An RFQ may be used when the Government does not intend to award a contract on the basis of the solicitation but wishes to obtain price, delivery, or other market information for planning purposes (see 15.405).

(f) Oral solicitations are authorized for perishable subsistence. An oral solicitation may also be used when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government. Use of an oral solicitation does not relieve the contracting officer from complying with other requirements of this regulation. In addition to other applicable documentation requirements (see Subpart 4.8), documentation of oral solicitations shall include—

- (1) A justification for use of an oral solicitation;
- (2) Item description, quantity, and delivery schedule;
- (3) Sources solicited, including the date, time, name of individual contacted, and prices quoted; and
- (4) The solicitation number provided to the prospective contractors.

(g) Unless prohibited by agency regulations, letter RFP's may be used for acquisitions conducted under 6.302, Circumstances permitting other than full and open competition. When this technique is used, contracting officers must still comply with other portions of this regulation, such as Subparts 5.2, Synopses of Proposed Contract Actions, and 15.8, Price Negotiation. Letter RFP's should be as clear and concise as possible; exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:

- (1) RFP number and date.
- (2) Name and address of contracting office.
- (3) Type of contract contemplated.
- (4) Quantity, description, and required delivery for the item.
- (5) Applicable certifications and representations.
- (6) Contract terms and conditions (reference to prior contract or updates should be provided, as applicable).
- (7) Offer due date.
- (8) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and different data requirements.

(h) If, after considering any responses to a proper notice of proposed sole source contract action (see 5.207(e)(3)), the contracting officer determines that more than one source can meet the Government's needs, the contracting officer shall solicit offers using competitive procedures. The contracting officer shall proceed in accordance with 5.203 for publicizing and response times.

(i) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile proposals (see 15.407(j)). In determining whether or not to authorize facsimile proposals, the contracting officer shall consider such factors as—

- (1) Anticipated proposal size and volume;
- (2) Urgency of the requirement;
- (3) Frequency of price changes;
- (4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and
- (5) Adequacy of administrative procedures and con-

These projections may include rates for labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

“Forward pricing rate recommendation” means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

“Price,” as used in this subpart, means cost plus any fee or profit applicable to the contract type.

“Price analysis” means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

“Technical analysis,” as used in this subpart, means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

15.802 Policy.

(a) 10 U.S.C. 2306a and 41 U.S.C. 254(d) provide that all executive agencies shall require a prime contractor or any subcontractor to submit and certify cost or pricing data under certain circumstances. The Acts also require inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.

(b) Contracting officers shall—

(1) Purchase supplies and services from responsible sources at fair and reasonable prices;

(2) Price each contract separately and independently and not (i) use proposed price reductions under other contracts as an evaluation factor or (ii) consider losses or profits realized or anticipated under other contracts; and

(3) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

15.803 General.

(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.

(b) Before issuing a solicitation, the contracting officer

shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

(c) Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracting officer's prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the contracting officer should include comments in the price negotiation memorandum when significant audit or other specialist recommendations are not adopted.

(d) The contracting officer's primary concern is the price the Government actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Government and the contractor. If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall then refer the contract action to higher authority. Disposition of the action by higher authority should be documented.

15.804 Cost or pricing data.

15.804-1 General.

(a) Cost or pricing data submitted by an offeror or contractor enable the Government to perform cost or price analysis and ultimately enable the Government and the contractor to negotiate fair and reasonable prices. Cost or pricing data may be submitted actually or by specific identification in writing.

(b) The Armed Services Procurement Manual for Contract Pricing (ASPM No. 1) was issued by the Department of Defense to guide pricing and negotiating personnel. It provides detailed discussions and examples applying pricing policies to pricing problems. ASPM No. 1 is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be

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considered informational only. Copies of ASPM No. 1 (Stock No. 008-000-00221-5) may be purchased from the Superintendent of Documents, Attn: Mail List Section, U.S. Government Printing Office, Washington, DC 20402.

15.804-2 Requiring certified cost or pricing data.

(a)(1) Except as provided in 15.804-3, certified cost or pricing data are required before accomplishing any of the following actions:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts) expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for contracts awarded after December 5, 1990, expected to exceed \$500,000.

(ii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for modifications involving a price adjustment expected to exceed \$500,000, if the contract includes or has been modified in accordance with 15.804-2(a)(2) to include the \$500,000 threshold. Price adjustment amounts shall consider both increases and decreases. (For example, a \$30,000 modification resulting from a reduction of \$70,000 and an increase of \$40,000 is a pricing adjustment exceeding \$100,000, and a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts expected to exceed \$500,000 if the contract includes or has been modified to include the \$500,000 threshold per 15.804-2(a)(2). (But see 15.804-3(i).)

(iv) The modification of any subcontract covered by subdivision (a)(1)(iii) of this subsection, when the price adjustment (see subdivision (a)(1)(ii) of this subsection) is expected to exceed \$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts when the modification involves a price adjustment expected to exceed \$500,000 if the contract includes or has been modified to include the \$500,000 threshold per 15.804-2(a)(2).

(2) Department of Defense, National Aeronautics and Space Administration, and Coast Guard contracting officers shall, if requested by the contractor, modify

contracts entered into on or before December 5, 1990, to incorporate the \$500,000 threshold without requiring consideration. Contracting officers shall comply with contractors' requests for the threshold increase unless a contracting officer determines in accordance with the criteria at 15.804-2(a)(3) that a change in the threshold is not in the best interests of the Government. The requirement to submit certified cost or pricing data shall be determined by the threshold in the contract at the time of agreement on price regardless of when a undefinitized modification, change order or subcontract is issued.

(3) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in subparagraph (a)(1) of this subsection provided the action exceeds the small purchase limitation. For such pricing actions, the instances in which certified cost or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor—

(i) Has been the subject of recent or recurring, and significant findings of defective pricing;

(ii) Currently has significant deficiencies in its cost estimating systems; or

(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.

The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer's written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.

(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.

(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2)).

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

(c) The requirements of this section also apply to con-

PART 15—CONTRACTING BY NEGOTIATION

15.804-4

promotion);

(3) Normal quantity per order; and

(4) Annual volume of sales to largest customers.

(i) *Waiver for exceptional cases.* The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) requires the submission of certified cost or pricing data unless exempt or waived under this subsection 15.804-3.

15.804-4 Certificate of Current Cost or Pricing Data.

(a) When certified cost or pricing data are required under 15.804-2, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown below, and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of* are accurate, complete, and current as of**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, quotation, request for price

adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see 15.804-3(a) through (d)).

(f) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification.

(g) Contracting officers shall not require certification at the time of agreement for data supplied in support of forward pricing rate agreements (see 15.809) or other advance agreements. When a forward pricing rate agreement or other advance agreement is used in partial support of a later contractual action that requires a certificate, the price proposal certificate shall cover (1) the data originally supplied to support the forward pricing rate agreement or other advance agreement and (2) all data required to update the price proposal to the time of agreement on contract price.

(h) Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price

incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if (1) the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at 15.804-2(a)(1) or (2) the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at 15.804-2(a)(1) (see 49.105(c)(15)).

15.804-5 Reserved.

15.804-6 Submission of data.

(a)(1) The contracting officer shall specify (i) whether or not cost or pricing data are required, (ii) whether or not certification will be required, and (iii) the form (see paragraph (b) of this subsection) in which the cost or pricing data shall be submitted. Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

(2) When certified cost or pricing data are not required because an action is below the pertinent thresh-

old set forth at 15.804-2(a)(1), the contracting officer may request partial or limited data to determine a reasonable price. The contracting officer shall request only that data which the contracting officer considers necessary to determine a reasonable price. For example, cost data might be necessary to support an analysis of material costs, but not for labor and overhead costs. When such partial or limited data are requested, the contracting officer should require, as a minimum, the submission of information on the prices and quantities at which the offeror has previously sold the same or similar products.

(b)(1) Cost or pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, unless required to be submitted on one of the termination forms specified in Subpart 49.6. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) Contract pricing proposals submitted on SF 1411 with supporting attachments shall be prepared to satisfy the instructions and appropriate format of Table 15-2.

TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL

1. SF 1411 provides a vehicle for the offeror to submit to the Government a pricing proposal of estimated and/or incurred costs by contract line item with supporting information, adequately cross-referenced, suitable for detailed analysis. A cost-element breakdown, using the applicable format prescribed in 7A, B, or C below, shall be attached for each proposed line item and must reflect any specific requirements established by the contracting officer. Supporting breakdowns must be furnished for each cost element, consistent with offeror's cost accounting system.

When more than one contract line item is proposed, summary total amounts covering all line items must be furnished for each cost element. If agreement has been reached with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature. Depending on offeror's system, breakdowns shall be provided for the following basic elements of cost, as applicable:

Materials—Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price.

Competitive Methods—For those acquisitions (e.g., subcontracts, purchase orders, material orders, etc.) exceeding the pertinent threshold set forth at 15.804-2(a)(1) priced on a competitive basis, also provide data showing degree of competition, and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than cost of the comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see 31.205-26(e)).

Established Catalog or Market Prices/Prices Set by Law or Regulation—When an exemption from the requirement to submit cost or pricing data is claimed, whether the item was produced by others or by the offeror, provide justification for the exemption as required by 15.804-3(e).

Noncompetitive Methods—For those acquisitions (e.g., subcontracts, purchase orders, material orders, etc.) exceeding the pertinent threshold set forth at 15.804-2(a)(1) priced on a noncompetitive basis, also provide data showing the basis for establishing source and reasonableness of price. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost by elements. As required by 15.806-2(a), provide a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is either: (i) \$1,000,000 or more, or (ii) both more than the pertinent threshold set forth in 15.804-2(a)(1)(iii) and (iv) and more than 10 percent of the prime contractor's proposed price. The contracting officer may require submission of cost or pricing data in support of proposals in lower amounts. Submit the results of the analysis of the prospective source's proposal as required by 15.806. When the submission of a prospective source's cost or pricing data is required as described above, it shall be included as part of the offeror's initial pricing proposal.

PART 19

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, et seq.), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2301, et seq.), the Federal Property and Administrative Services Act (41 U.S.C. 252), and Executive Order 12138, May 18, 1979. It covers—

- (1) The determination that a concern is eligible for participation in the programs identified in this part;
- (2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;
- (3) Setting acquisitions aside for exclusive competitive participation by small business concerns;
- (4) The certificate of competency program;
- (5) The subcontracting assistance program;
- (6) The “8(a)” program, under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern; and
- (7) The use of women-owned small business concerns.

(b) This part applies only inside the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

19.001 Definitions.

“Concern,” as used in this part, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

“Determination of eligibility,” as used in this part, means the written determination issued by the SBA or the Department of Labor certifying that the holder is a manu-

facturer or regular dealer under the Walsh-Healey Public Contracts Act (see 22.608-2(f)(2)).

“Fair market price,” as used in this part, means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202-6).

“Handicapped individual” means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

“Industry,” as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the Standard Industrial Classification (SIC) Manual.

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.906).

“Public or private organization for the handicapped” means one which (a) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (b) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (c) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see 19.102). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

“Small disadvantaged business concern” means a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR 124.

(a) “Socially disadvantaged individuals” means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

(b) “Economically disadvantaged individuals” means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged.

(1) “Subcontinent Asian Americans” means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(2) “Asian Pacific Americans” means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

(3) “Native Americans” means American Indians, Eskimos, Aleuts, and Native Hawaiians.

(c) “Native Hawaiian Organization” means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

(d) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by

the State in which such tribe, band, nation, group, or community resides.

SUBPART 19.1—SIZE STANDARDS

19.101 Explanation of terms.

“Affiliates.” As used in this subpart, business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; *provided*, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States.

(a) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(b) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(c) *Control through stock ownership.* (1) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(2) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern’s voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(3) If a concern’s voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(d) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(e) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(f) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(1) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(2) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(3) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(g) *Control through contractual relationships.*

(1) Definition of a joint venture for size determination purposes. A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a con-

tinuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(2) Joint venture - procurement and property sale assistance. Concerns bidding on a particular procurement or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties.

(3) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(4) Franchise and license agreements. If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

"Annual receipts." (a) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(1) In any case of change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(2) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, "annual receipts" shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(b) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (a) above, are applicable.

"Number of employees" is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR 121.)

(b) Small business size standards are applied by—

(1) Classifying the product or service being acquired in the industry whose definition, as found in the Standard Industrial Classification (SIC) Manual, best describes the principal nature of the product or service being acquired;

(2) Identifying the size standard SBA established for that industry; and

(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.

(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—

(1) Except as provided in subparagraphs (f)(2) through (f)(5) of this section, in the case of Government acquisitions set-aside for small businesses, such non-manufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term "nonmanufacturer" includes a concern which can manufacture or produce the product referred to in the specific acquisition but does not do so in connection with that acquisition. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being acquired is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular acquisition is the manufacturer or a nonmanufacturer for the purpose of the size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act. However, see the limitations on subcontracting at 52.219-14 which apply to any small business offeror other than a regular dealer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given

acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(3) If the acquisition is subject to and is actually procured under “small purchase procedures”, such nonmanufacturer may furnish any domestically produced or manufactured product.

(4) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(5) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

(i) In such cases, section 637(a)(17)(A) of the Small Business Act provides that the nonmanufacturer may furnish any domestic product if such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted from section 35(a) by section 7(j)(13)(C) of the Small

Business Act. For the most current listing of classes for which SBA has granted a waiver, contact the regional SBA office.

(ii) Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(iii) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(iv) Requests for waivers shall be sent to the Chairman of the Size Standards Policy Board, SBA Central Office, 409 Third Street, SW., Washington, DC 20416.

(g) The industry size standards are set forth in the following table. The table column labeled “SIC” follows the standard industrial classification code as published by the Government in the Standard Industrial Classification Manual. The Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. The number of employees or annual receipts indicates the maximum allowed for a concern, including its affiliates, to be considered small.

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PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS 19.102

SIC	DESCRIPTION	SIZE	SIC	DESCRIPTION	SIZE
3555	Printing Trades Machinery	500	3634	Electric Housewares and Fans	750
3556	Food Products Machinery	500	3635	Household Vacuum Cleaners	750
3559	Special Industry Machinery, N.E.C.	500	3639	Household Appliances, N.E.C.	500
3561	Pumps and Pumping Equipment, Except Fluid Power Pumps	500	3641	Electric Lamps	1,000
3562	Ball and Roller Bearings	750	3643	Current-Carrying Wiring Devices	500
3563	Air and Gas Compressors	500	3644	Noncurrent-Carrying Wiring Devices	500
3564	Blowers and Exhaust and Ventilation Fans ..	500	3645	Residential Electric Lighting Fixtures	500
3565	Packaging Machinery	500	3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3566	Speed Changers, Drives, and Gears	500	3647	Vehicular Lighting Equipment	500
3567	Industrial Furnaces and Ovens	500	3648	Lighting Equipment, N.E.C.	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500	3651	Radio and Television Receiving Sets, Except Communication Types	750
3569	General Industrial Machinery and Equipment, N.E.C.	500	3652	Phonograph Records and Pre-Recorded Magnetic Tape	750
3571	Computers	1,000	3661	Telephone and Telegraph Apparatus	1,000
3572	Computer Storage Devices	1,000	3663	Radio and TV Communications Systems and Equipment, and Broadcast and Studio Equipment	750
3575	Computer Terminals	1,000	3669	Other Communications Equipment, N.E.C.	750
3577	Computer Peripheral Equipment, N.E.C. ...	1,000	3671	Electron Tubes	750
3578	Calculating and Accounting Machines	1,000	3672	Printed Circuit Boards	500
3579	Office Machines, N.E.C.	500	3674	Semiconductors and Related Devices	500
3581	Automatic Merchandising Machines	500	3675	Electronic Capacitors	500
3582	Commercial Laundry, Dry Cleaning, and Pressing Machines	500	3676	Resistors, for Electronic Applications	500
3585	Refrigeration and Heating Equipment	750	3677	Electronic Coils, Transformers, and Other Inductors	500
3586	Measuring and Dispensing Pumps	500	3678	Connectors, for Electronic Applications	500
3589	Service Industry Machines, N.E.C.	500	3679	Electronic Components, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500	3691	Storage Batteries	500
3593	Fluid Power Cylinders and Actuators	500	3692	Primary Batteries, Dry and Wet	1,000
3594	Fluid Power Pumps and Motors	500	3694	Electrical Equipment for Internal Combustion Engines	750
3596	Scales and Balance, Except Laboratory	500	3695	Recording Media	1,000
3599	Machinery, Except Electrical, N.E.C.	500	3699	Electrical Equipment, and Supplies, N.E.C.	750
Major Group 36-Electrical and Electronic Machinery, Equipment and Supplies			Major Group 37-Transportation Equipment		
3612	Power, Distribution and Specialty Transformers	750	3711	Motor Vehicles and Passenger Car Bodies .	1,000
3613	Switchgear and Switchboard Apparatus	750	3713	Truck and Bus Bodies	500
3621	Motors and Generators	1,000	3714	Motor Vehicle Parts and Accessories	750
3624	Carbon and Graphite Products	750	3715	Truck Trailers	500
3625	Relays and Industrial Controls	750	3716	Motor Homes	1,000
3629	Electrical Industrial Apparatus, N.E.C.	500	3721	Aircraft	1,500
3631	Household Cooking Equipment	750	3724	Aircraft Engines and Engine Parts	1,000
3632	Household Refrigerators and Home and Farm Freezers	1,000	3728	Aircraft Equipment, N.E.C.	1,000
3633	Household Laundry Equipment	1,000	3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.
N.E.C.: Not Elsewhere Classified

SIC	DESCRIPTION	SIZE	SIC	DESCRIPTION	SIZE
	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships.....	1,000	3873	Watches, Clocks, Clockwork Operated Devices, and Parts.....	500
	Ship Repair (including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian	1,000	Major Group 39-Miscellaneous Manufacturing Industries		
	Ship Repair (including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian	1,000	3911	Jewelry, Precious Metal.....	500
3732	Boat Building and Repairing	500	3914	Silverware, Plate Ware, and Stainless Steel Wire	500
3743	Railroad Equipment.....	1,000	3915	Jewelers' Findings and Materials, and Lapidary Work.....	500
3751	Motorcycles, Bicycles, and Parts.....	500	3931	Musical Instruments	500
3761	Guided Missiles and Space Vehicles.....	1,000	3942	Dolls	500
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts.....	1,000	3944	Games, Toys, and Children's Vehicles; Except Dolls and Bicycles	500
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000	3949	Sporting and Athletic Goods, N.E.C.	500
3792	Travel Trailers and Campers	500	3951	Pens, Mechanical Pencils, and Parts.....	500
3795	Tanks and Tank Components	1,000	3952	Lead Pencils, Crayons, and Artists' Materials	500
3799	Transportation Equipment, N.E.C.	500	3953	Marking Devices	500
	Major Group 38-Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks		3955	Carbon Paper and Inked Ribbons	500
3812	Search, Detection, Navigation, and Guidance Systems and Instruments	750	3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500
3821	Laboratory Apparatus and Furniture	500	3965	Needles, Pins, Buttons, and Clothing Fasteners	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500	3991	Brooms and Brushes.....	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Products	500	3993	Signs and Advertising Displays.....	500
3824	Totalizing Fluid Meters and Counting Devices	500	3995	Burial Caskets.....	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals.....	500	3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C. ..	750
3826	Analytical Instruments.....	500	3999	Manufacturing Industries, N.E.C.	500
3827	Optical Instruments	500	DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS AND SANITARY SERVICES		
3829	Measuring and Controlling Devices, N.E.C.	500	Major Group 40-Railroad Transportation		
3841	Surgical and Medical Instruments and Apparatus	500	4011	Railroads, Line-Haul Operating	1,500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies.....	500	4013	Switching and Terminal Establishments	500
3843	Dental Equipment and Supplies	500	Major Group 41-Local and Suburban Transit and Interurban Highway Passenger Transportation		
3844	X-Ray Apparatus and Tubes	500	4111	Local and Suburban Transit.....	\$3.5
3845	Electromedical and Electro Therapeutic Apparatus	500	4119	Local Passenger Transportation, N.E.C.	\$3.5
3851	Ophthalmic Goods.....	500	4121	Taxicab	\$3.5
3861	Photographic Equipment and Supplies.....	500	4131	Intercity and Rural Highway Passenger Transportation.....	\$3.5
			4141	Local Passenger Transportation Charter Service	\$3.5
			4142	Passenger Transportation Charter Service, Except Local	\$3.5

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.

N.E.C.: Not Elsewhere Classified

SIC	DESCRIPTION	SIZE
4151	School Buses	\$3.5
4173	Bus Terminal and Service Facilities.....	\$3.5

Major Group 42-Motor Freight Transportation and Warehousing

4212	Local Trucking Without Storage ⁷	\$12.5
4213	Trucking, Except Local	\$12.5
4214	Local Trucking With Storage	\$12.5
4215	Courier, Services, Except By Air	\$12.5
4221	Farm Product Warehousing and Storage.....	\$12.5
4222	Refrigerated Warehousing.....	\$12.5
4225	General Warehousing and Storage	\$12.5
4226	Special Warehousing and Storage, N.E.C. ...	\$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.....	\$3.5

Major Group 44-Water Transportation⁸

4412	Deep Sea Foreign Transportation of Freight.....	500
4424	Deep Sea Domestic Transportation of Freight.....	500
4432	Freight Transportation on the Great Lakes and Saint Lawrence Seaway	500
4449	Water Transportation of Freight, N.E.C.	500
4481	Deep Sea Transportation of Passengers, Except by Ferries	500
4482	Ferries.....	500
4489	Water Transportation of Passengers, N.E.C.	500
4491	Marine Cargo Handling	\$12.5
4492	Towing and Tugboat Services	\$3.5
4493	Marinas	\$3.5
4499	Water Transportation Services, N.E.C.	\$3.5

Major Group 45-Transportation by Air⁸

4512	Air Transportation, Scheduled.....	\$1,500
4513	Air Courier Services	\$1,500
4522	Air Transportation, Nonscheduled	\$1,500
4581	Services Related to Air Transportation	\$3.5

Major Group 46-Pipe Lines, Except Natural Gas

4612	Crude Petroleum Pipe Lines.....	1,500
4613	Refined Petroleum Pipe Lines	1,500
4619	Pipe Lines, N.E.C.	\$17.0

Major Group 47-Transportation Services

4724	Travel Agencies.....	¹⁰ \$0.5
4725	Tour Operators.....	\$3.5
4729	Arrangement of Passenger Transportation, N.E.C.	\$3.5
4731	Freight Forwarding and Arrangement.....	\$12.5

SIC	DESCRIPTION	SIZE
4741	Railroad Car Rental	\$3.5
4783	Packing and Crating	\$12.5
4785	Inspection Services, Fixed Facilities, N.E.C. .	\$3.5
4789	Services Incidental to Transportation, N.E.C.	\$3.5

Major Group 48-Communications

4812	Radio Telephone Communication Services	1,500
4813	Telephone Communications, Except Radio Telephone	1,500
4832	Radio Broadcasting	\$3.5
4833	Television Stations	\$7.0
4841	Cable and Other Pay TV.....	\$7.5
4899	Communications Services, N.E.C.	\$7.5

Major Group 49-Electric, Gas, and Sanitary Services

4911	Electric Services	214
4924	Natural Gas Distribution.....	500
4941	Water Supply	\$3.5
4952	Sewage Systems	\$3.5
4953	Refuse Systems ¹¹	\$6.0
4959	Sanitary Services, N.E.C.	\$3.5
4961	Steam Supply.....	\$6.0
4971	Irrigation Systems.....	\$3.5

DIVISION F—WHOLESALE TRADE

(Not applicable to Government Acquisition of Supplies. The nonmanufacturer size standard of 500 employees shall be used for Government acquisition of supplies.)

Major Group 50-Durable Goods

5012	Automobiles and Other Motor Vehicles.....	100
5013	Motor Vehicle Parts and Supplies, New.....	100
5014	Tires and Tubes	100
5015	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Home Furnishings	100
5031	Lumber, Plywood, and Millwork	100
5032	Brick, Stone, and Related Products	100
5033	Roofing, Siding, and Insulation	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies.....	100
5044	Office Equipment	100
5045	Computers and Computer Peripheral Equipment and Software.....	100
5046	Commercial Equipment, N.E.C.	100
5047	Medical and Hospital Equipment	100
5048	Ophthalmic Goods.....	100
5049	Professional Equipment, N.E.C.	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100
5063	Electrical Apparatus and Equipment.....	100

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.

N.E.C.: Not Elsewhere Classified

SIC	DESCRIPTION	SIZE	SIC	DESCRIPTION	SIZE
5064	Electrical Appliances, Television and Radio Sets	100	5162	Plastics Materials and Basic Shapes	100
5065	Electronic Parts and Equipment	100	5169	Chemicals and Allied Products, N.E.C.	100
5072	Hardware	100	5171	Petroleum Bulk Stations and Terminals	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100	5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Station and Terminals	100
5075	Warm Air Heating and Air Conditioning Equipment and Supplies	100	5181	Beer and Ale	100
5078	Refrigeration Equipment and Supplies	100	5182	Wines and Distilled Alcoholic Beverages ...	100
5082	Construction and Mining Machinery and Equipment	100	5191	Farm Supplies	100
5083	Farm and Garden Machinery and Equipment	100	5192	Books, Periodicals, and Newspapers	100
5084	Industrial Machinery	100	5193	Flowers and Florists' Supplies	100
5085	Industrial Supplies	100	5194	Tobacco and Tobacco Products	100
5087	Service Establishment Equipment and Supplies	100	5198	Paints, Varnishes, and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100	5199	Nondurable Goods, N.E.C.	100
5091	Sporting and Recreational Goods	100	DIVISION G—RETAIL TRADE (Not applicable to Government Acquisition of Supplies. The nonmanufacturer size standard of 500 employees shall be used for Government acquisition of supplies.) Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers		
5092	Toys and Hobby Groups and Supplies	100			
5093	Scrap and Waste Materials	100	5211	Lumber and Other Building Materials Dealers	\$3.5
5094	Jewelry, Watches, Diamonds and Other Precious Stones	100	5231	Paint, Glass, and Wallpaper Stores	\$3.5
5099	Durable Goods, N.E.C.	100	5251	Hardware Stores	\$3.5
Major Group 51—Wholesale Trade—Nondurable Goods			5261	Retail Nurseries, Lawn and Garden Supply Stores	\$3.5
			5271	Mobile Home Dealers	\$6.5
5111	Printing and Writing Paper	100	Major Group 53—General Merchandise Stores		
5112	Stationery Supplies	100			
5113	Industrial and Personal Service Paper	100	5311	Department Stores	\$13.5
5122	Drugs, Drug Proprietarys, and Druggists' Sundries	100	5331	Variety Stores	\$5.5
5131	Piece Goods and Notions	100	5399	Miscellaneous General Merchandise Stores	\$3.5
5136	Men's and Boys' Clothing and Furnishings .	100	Major Group 54—Food Stores		
5137	Women's, Children's and Infants' Clothing and Accessories	100			
5139	Footwear	100	5411	Grocery Stores	\$13.5
5141	Groceries, General Line	100	5421	Meat and Fish (Seafood) Markets	\$3.5
5142	Frozen Foods	100	5431	Fruit Stores and Vegetable Markets	\$3.5
5143	Dairy Products	100	5441	Candy, Nut, and Confectionery Stores	\$3.5
5144	Poultry and Poultry Products	100	5451	Dairy Products Stores	\$3.5
5145	Confectionery	100	5461	Retail Bakeries	\$3.5
5146	Fish and Seafoods	100	5499	Miscellaneous Food Stores	\$3.5
5147	Meats and Meat Products	100	Major Group 55—Automotive Dealers and Gasoline Service Stations		
5148	Fresh Fruits and Vegetables	100			
5149	Groceries and Related Products, N.E.C.	100	5511	Motor Vehicle Dealers (New and Used)	\$17.0
5153	Grain	100	5521	Motor Vehicle Dealers (Used Only)	\$11.5
5154	Livestock	100	5531	Auto and Home Supply Stores	\$3.5
5159	Farm-Product Raw Materials, N.E.C.	100	5541	Gasoline Service Stations	\$4.5
			5551	Boat Dealers	\$3.5

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N.E.C.: Not Elsewhere Classified

SIC	DESCRIPTION	SIZE	SIC	DESCRIPTION	SIZE
7819	Services Allied to Motion Picture			Major Group 82-Educational Services	
	Production	\$14.5	8211	Elementary and Secondary Schools	\$3.5
7822	Motion Picture and Tape Distribution	\$14.5	8221	Colleges and Universities, N.E.C.	\$3.5
7829	Services Allied to Motion Picture		8222	Junior Colleges	\$3.5
	Distribution	\$3.5	8231	Libraries and Information Centers.....	\$3.5
7832	Motion Picture Theaters, Except Drive-in...	\$3.5	8243	Data Processing Schools.....	\$3.5
7833	Drive-in Motion Picture Theaters.....	\$3.5	8244	Business and Secretarial Schools	\$3.5
7841	Video Tape Rental.....	\$3.5	8249	Vocational Schools, N.E.C.	\$3.5
			8299	Schools and Educational Services, N.E.C. ..	\$3.5
			8299	Flight Training Services	\$12.5
	Major Group 79-Amusement and Recreation Services,			Major Group 83-Social Services	
	Except Motion Pictures		8322	Individual and Family Social Services	\$3.5
7911	Dance Halls, Studios, and Schools	\$3.5	8331	Job Training and Related Services	\$3.5
7922	Theatrical Producers (Except Motion		8351	Child Day Care Services	\$3.5
	Pictures) and Miscellaneous Theatrical		8361	Residential Care.....	\$3.5
	Services.....	\$3.5	8399	Social Services, N.E.C.	\$3.5
7929	Bands, Orchestras, Actors, and Other			Major Group 84-Museums, Botanical,	
	Entertainers and Entertainment Groups..	\$3.5		Zoological Gardens	
7933	Bowling Alleys.....	\$3.5	8412	Museums and Art Galleries	\$3.5
7941	Professional Sports Clubs and Promoters....	\$3.5	8422	Botanical and Zoological Gardens	\$3.5
7991	Physical Fitness Facilities.....	\$3.5		Major Group 86-Membership Organizations	
7993	Coin-Operated Amusement Devices	\$3.5	8611	Business Associations	\$3.5
7996	Amusement Parks	\$3.5	8621	Professional Organizations	\$3.5
7997	Membership Sports and Recreation Clubs ..	\$3.5	8631	Labor Organizations	\$3.5
7999	Amusement and Recreation Services, N.E.C.	\$3.5	8641	Civic and Social Associations	\$3.5
			8651	Political Organizations	\$3.5
			8661	Religious Organizations	\$3.5
			8699	Membership Organizations, N.E.C.	\$3.5
	Major Group 80-Health Services			Major Group 87-Miscellaneous Services	
8011	Offices and Clinics of Doctors of		8711	Engineering Services:	
	Medicine	\$3.5		Military and Aerospace Equipment and	
8021	Offices and Clinics of Dentists.....	\$3.5		Military Weapons	\$13.5
8031	Offices of Osteopathic Physicians.....	\$3.5		Marine Engineering and Naval	
8041	Offices of Chiropractors	\$3.5		Architecture	\$9.0
8042	Offices of Optometrists	\$3.5		Other Engineering Services	\$2.5
8043	Offices of Podiatrists	\$3.5	8712	Architectural Services (Other Than Naval) .	\$2.5
8049	Offices of Health Practitioners, N.E.C.	\$3.5	8713	Surveying Services	\$2.5
8051	Skilled Nursing Care Facilities.....	\$3.5	8721	Accounting, Auditing, and Bookkeeping	
8052	Intermediate Health Care Facilities	\$3.5		Services.....	\$4.0
8059	Nursing and Personal Care Facilities,		8731	Commercial Physical and Biological	
	N.E.C.	\$3.5		Research.....	19500
8062	General Medical and Surgical Hospitals	\$3.5		Aircraft	1,500
8063	Psychiatric Hospitals	\$3.5		Aircraft Parts, and Auxiliary Equipment	
8069	Specialty Hospitals, Except Psychiatric	\$3.5		Aircraft Engines and Engines Parts	1,000
8071	Medical Laboratories	\$3.5		Space Vehicles and Guided Missiles, their	
8072	Dental Laboratories	\$3.5		Propulsion Units, their Propulsion Unit Parts,	
8082	Home Health Care Agencies	\$3.5		and their Auxiliary Equipment and Parts	1,000
8092	Kidney Dialysis Centers	\$3.5			
8093	Specialty Outpatient Clinics, N.E.C.	\$3.5			
8099	Health and Allied Services, N.E.C.	\$3.5			
	Major Group 81-Legal Services				
8111	Legal Services	\$3.5			

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.

N.E.C.: Not Elsewhere Classified

SIC	DESCRIPTION	SIZE
	Other Commercial Physical and Biological Research	500
8732	Commercial Economic, Sociological and Educational Research.....	\$3.5
8733	Noncommercial Research Organizations	\$3.5
8734	Testing Laboratories.....	\$3.5
8741	Management Services.....	\$3.5
8742	Management Consulting Services, N.E.C. ...	\$3.5
8743	Public Relations Services	\$3.5
8744	Facilities Support Management Services	²⁰ \$3.5
--	Base Maintenance ¹⁷	\$13.5
8748	Business Consulting Services, N.E.C.	\$3.5
Major Group 89-Miscellaneous Services		
8999	Services, N.E.C.	\$3.5

FOOTNOTES

¹ Reserved.

² *SIC-1629*: To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

³ *SIC Division D—Manufacturing*: “Rebuilding on a factory basis or equivalent.” For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

⁴ *SIC-2033*: For purposes of Government procurement for food canning and preserving under SIC-2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

⁵ *SIC-2911*: For purposes of Government procurement, the firm may not have more than 1,500 employees, nor may it have more than 75,000 barrels per day capacity. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs in the process may not exceed 75,000 barrels. In addition to the direct owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput, or other form, or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this 19-20

would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

⁶ *SIC-3011*: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112, provided that (1) the value of tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal products which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

⁷ *SIC-4212*: The Component “Garbage and Refuse, Collecting and Transporting, Without Disposal” shall have a size standard of \$6.0 million. This is the same size standard as SIC-4953, Refuse Systems.

⁸ *Offshore Marine Services (Major Groups 44 and 45)*: The applicable size standard shall be \$14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

⁹ *SIC-4512, 4513, and 4522*: Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. This does not include offshore marine transportation services as defined in footnote ⁸.

¹⁰ *SIC-4724 and 6531*: As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received would be included as revenue.

¹¹ *SIC-4953*: “Garbage and Refuse, Collecting and Transportation: Without Disposal,” a component of SIC-4212, has the same size standard as SIC-4953.

SUBPART 19.2—POLICIES**19.201 General policy.**

(a) It is the policy of the Government to place a fair proportion of its acquisitions, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems, with small business concerns and small disadvantaged business concerns. Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) Heads of contracting activities are responsible for effectively implementing the Small Business and Small Disadvantaged Business Utilization Programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small and small disadvantaged business program requirements and take all reasonable action to increase small business participation in their activities' contracting processes.

(c) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section (k) of the Small Business Act and 13 CFR 125.4(g)(7)). Management of the office shall be the responsibility of an officer or employee of the agency who shall, in carrying out the purposes of the Act—

(1) Be known as the Director of Small and Disadvantaged Business Utilization;

(2) Be appointed by the agency head;

(3) Be responsible to and report directly to the agency head or the deputy to the agency head;

(4) Be responsible for the agency carrying out the functions and duties in sections 8 and 15 of the Small Business Act;

(5) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(6) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8 and 15 of the Small Business Act;

(7) Assign a small business technical advisor to each contracting activity within the agency to which the SBA has assigned a representative (see 19.402)—

(i) Who shall be a full-time employee of the contracting activity, well qualified, technically trained, and familiar with the supplies or services contracted for by the activity; and

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and

duties relating to sections 8 and 15 of the Small Business Act;

(8) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8 and 15 of the Small Business Act;

(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside (including those involving Labor Surplus Areas), under Subpart 19.8 as a section 8(a) award, or under a procedure authorized by section 1207 of Pub. L. 99-661, if applicable.

(d) Small and Disadvantaged Business Utilization Specialists shall be appointed and act in accord with agency regulations.

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed below and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8, or under a procedure authorized by sec. 1207 of Pub. L. 99-661. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.

19.202-1 Encouraging small business participation in acquisitions.

Small business concerns shall be afforded an equitable opportunity to compete for all contracts that they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions:

(a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

(b) Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under 15 U.S.C. 694b.

(c) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.

(d) Encourage prime contractors to subcontract with small business concerns (see Subpart 19.7).

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative at least 30 days prior to the issuance of the solicitation if—

(i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it

unlikely that small businesses can compete for the prime contract, or

(ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract.

(2) The contracting officer shall also provide a statement explaining why the—

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract; or

(iv) Consolidated construction project cannot be acquired as separate discrete projects.

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation, made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA procurement center representative in accordance with 19.505.

19.202-2 Locating small business sources.

The contracting officer shall, to the extent practicable, encourage maximum participation by small business concerns, small disadvantaged business concerns, and women-owned small business concerns in acquisitions by taking the following actions:

(a) Include on mailing lists all established and potential small business sources, including those located in labor surplus areas, if the concerns have submitted acceptable applications or appear from other representations to be qualified small business concerns.

(b) Before issuing solicitations, make every reasonable effort to find additional small business concerns, unless lists are already excessively long and only some of the concerns on the list will be solicited. This effort should include contacting the agency SBA procurement center representative, or if there is none, the SBA.

(c) Publicize solicitations and contract awards in the "Commerce Business Daily" (see Subparts 5.2 and 5.3).

19.202-3 Equal low bids.

In the event of equal low bids, awards shall be made first to small business concerns which are also labor sur-

plus area concerns, and second to small business concerns which are not also labor surplus area concerns.

19.202-4 Solicitation.

The contracting officer shall encourage maximum response to solicitations by small business, small disadvantaged business concerns, and women-owned small business concerns by taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Send solicitations to (1) all small business concerns on the solicitation mailing list, or (2) a pro rata number of small business concerns when less than a complete list is used.

(d) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government.

19.202-5 Data collection and reporting requirements.

Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions:

(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business concern, or women-owned small business (see the provisions at 52.219-1, Small Business Concern Representation, 52.219-2, Small Disadvantaged Business Concern Representation, and 52.219-3, Women-Owned Small Business Representation).

(b) Accurately measure the extent of participation by small business concerns, small disadvantaged business concerns, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed with small business concerns during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6).

19.202-6 Determination of fair market price.

Agencies shall determine the fair market price of small business set-aside and 8(a) contracts as follows:

(a) For total and partial small business set-aside contracts, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.805-2.

22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222-41, Service Contract Act of 1965, as amended.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

22.1021 Substantial variance hearings.

(a) A contracting agency or other interested party may request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the contracting agency, the contracting officer shall submit a request through appropriate channels (ordinarily the agency labor advisor) to Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210, with sufficient data to support a prima facie showing that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include (1) the number of the wage determinations at issue, (2) name of contracting agency, (3) status of the acquisition and any estimated acquisition dates (e.g., bid opening, award, and commencement of performance), and (4) names and addresses, if known, of interested parties.

(b) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as specified in subparagraphs (b)(1) and (b)(2) of this section—

(1) For sealed bid contracts, more than 10 days before the award of the contract;

(2) For negotiated contracts and for contracts with provisions extending the initial term by option, before the commencement date of the contract or the follow-up option period, as the case may be.

22.1022 Withholding of contract payments.

Any violations of the clause at 52.222-40, Service Contract Act of 1965, as amended—Contracts of \$2,500 or Less, or the clause at 52.222-41, Service Contract Act of 1965, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of

Assistant Regional Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Act or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), an Administrative Law Judge, or the Board of Service Contract Appeals. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

22.1023 Termination for default.

As provided by the Act, any contractor failure to comply with the requirements of the contract clauses related to the Act may be grounds for termination for default (see paragraph (k) of the clause at 52.222-41, Service Contract Act of 1965, as amended).

22.1024 Cooperation with the Department of Labor.

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

22.1025 Ineligibility of violators.

A list of persons or firms found to be in violation of the Act is contained in the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the Act, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

22.1026 Disputes concerning labor standards.

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222-41, Service Contract Act of 1965, as

amended, and not under the clause at 52.233-1, Disputes.

SUBPART 22.11—PROFESSIONAL EMPLOYEE COMPENSATION

22.1101 Applicability.

The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees. The Office of Federal Procurement Policy issued Policy Letter No. 78-2, dated March 29, 1978, Preventing "Wage Busting" for Professionals. This subpart implements that policy letter. Its application is limited to professional employees. This Subpart 22.11 provides policies and procedures for use in negotiated service contracts exceeding \$500,000 that involve meaningful numbers of professional employees.

22.1102 Definition.

"Professional employee" means any person meeting the definition of "employee employed in a bona fide . . . professional capacity" given in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics, and teaching). To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties.

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed \$500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making an award.

SUBPART 22.12—RESERVED

SUBPART 22.13—SPECIAL DISABLED AND VIETNAM ERA VETERANS

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 2012) (the Act); Executive Order 11701, January 24, 1973 (38 FR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250 and Part 61-250). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veteran's status.

22.1302 Applicability.

(a) The Act applies to all contracts for supplies and services (including construction) of \$10,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) of that government that does not participate in work on or under the contract.

22.1303 Waivers.

(a) The agency head, with the concurrence of the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor (Director), may waive any or all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b)(1) The head of a civilian agency, with the concurrence of the Director of OFCCP, or (2) the Secretary of Defense may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such

(b) Agencies making determinations under 25.102(a)(4) or 25.202(a)(3) for unlisted articles, materials, or supplies shall submit a copy of these determinations to the appropriate FAR Council for possible addition of items to the list.

(c) Agencies shall provide detailed information to the appropriate FAR Council if any item on the list becomes reasonably available in sufficient commercial quantities of a satisfactory quality.

(d)(1) The excepted articles, materials, and supplies are as follows:

- Acetylene, black.
- Agar, bulk.
- Anise.
- Antimony, as metal or oxide.
- Asbestos, amosite, chrysotile, and crocidolite.
- Bananas.
- Bauxite.
- Beef, corned, canned.
- Beef extract.
- Bephenium hydroxynapthoate.
- Bismuth.
- Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
- Brazil nuts, unroasted.
- Cadmium, ores and flue dust.
- Calcium cyanamide.
- Capers.
- Cashew nuts.
- Castor beans and castor oil.
- Chalk, English.
- Chestnuts.
- Chicle.
- Chrome ore or chromite.
- Cinchona bark.
- Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
- Cocoa beans.
- Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
- Coffee, raw or green bean.
- Colchicine alkaloid, raw.
- Copra.
- Cork, wood or bark and waste.
- Cover glass, microscope slide.
- Crane rail (85-pound per foot).
- Cryolite, natural.
- Dammar gum.
- Diamonds, industrial, stones and abrasives.
- Emetine, bulk.
- Ergot, crude.
- Erythrityl tetranitrate.
- Fair linen, altar.
- Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

Goat and kidskins.

Graphite, natural, crystalline, crucible grade.

Hand file sets (Swiss pattern).

Handsewing needles.

Hemp yarn.

Hog bristles for brushes.

Hyoscine, bulk.

Ipecac, root.

Iodine, crude.

Kaurigum.

Lac.

Leather, sheepskin, hair type.

Lavender oil.

Manganese.

Menthol, natural bulk.

Mica.

Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

Nitroguanidine (also known as picrite).

Nux vomica, crude.

Oiticica oil.

Olive oil.

Olives (green), pitted or unpitted, or stuffed, in bulk.

Opium, crude.

Oranges, mandarin, canned.

Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in subparagraph (d)(2) of this section).

Pine needle oil.

Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.

Pyrethrum flowers.

Quartz crystals.

Quebracho.

Quinidine.

Quinine.

Rabbit fur felt.

Radium salts, source and special nuclear materials.

Rosettes.

Rubber, crude and latex.

Rutile.

Santonin, crude.

Secretin.

Shellac.

Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

Spices and herbs, in bulk.

Steel conduit (5" and 6").

Sugars, raw.

Swords and scabbards.

Talc, block, steatite.
 Tantalum.
 Tapioca flour and cassava.
 Tartar, crude; tartaric acid and cream of tartar in bulk.
 Tea in bulk.
 Thread, metallic (gold).
 Thyme oil.
 Tin in bars, blocks, and pigs.
 Triprolidine hydrochloride.
 Tungsten.
 Vanilla beans.
 Venom, cobra.
 Wax, carnauba.
 Wire glass

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

(2) As used in subparagraph (d)(1) of this section, petroleum terms are defined as follows:

(i) "Crude oil" means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vapor phase in a reservoir and that are not natural gas products.

(ii) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(A) "Asphalt"—a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.

(B) "Fuel oil"—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) "Gasoline"—a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(D) "Jet fuel"—a refined petroleum distillate used to fuel jet propulsion engines.

(E) "Liquefied gases"—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) "Lubricating oil"—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) "Naphtha"—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.

(H) "Natural gas products"—liquids (under atmospheric conditions), including natural gaso-

line, that—

(1) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures of hydrocarbons that existed in a vapor phase in a reservoir, and

(2) When recovered and without processing in a refinery, definitions of products contained in subdivision (B), (C), (D), and (G) of this section.

(I) "Residual fuel oil"—a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

(iii) "Unfinished oils" means one or more of the petroleum oils listed in subdivision (ii) of this section, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

25.109 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.225-1, Buy American Certificate, in solicitations where the clause at 52.225-3 is used.

(b) When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see 25.108 and Subpart 25.4), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see 25.105).

(c) The contracting officer shall insert the provision at 52.225-2, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for the acquisition of civil aircraft and related articles.

(d) The contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, unless—

(1) The solicitation is restricted to domestic end products under Subpart 6.3; or

(2) The acquisition is made under the Trade Agreements Act (see Subpart 25.4); or

(3) Another exception to the Buy American Act applies (e.g., nonavailability or public interest).

SUBPART 25.2—BUY AMERICAN ACT—CONSTRUCTION MATERIALS

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17, 1954 (as amended). It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Definitions.

“Components,” as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

“Construction,” as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

“Construction material,” as used in this subpart, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

“Domestic construction material,” as used in this subpart, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with 25.202(a)(3) are treated as domestic.

“Foreign construction material,” as used in this subpart, means a construction material other than a domestic construction material.

“United States” (see 25.101).

25.202 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with 25.203;

(2) The agency head determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the contracting activity or designee determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see 25.108).

(b) When it is determined for any of the reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the

contract. Findings justifying the exception shall be available for public inspection.

25.203 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the concerned agency determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the agency head for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

25.204 Violations.

If the agency head finds that in the performance of a construction contract there has been a failure to comply with the clause at 52.225-5, Buy American Act—Construction Materials, those findings (including the name of the contractor obligated under the contract) shall be made public. No other contract for construction shall be awarded to that contractor, its subcontractors, or suppliers with which that contractor is associated or affiliated, within a period of 3 years after the findings are made public. (For debarment procedures, see Subpart 9.4.)

25.205 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.225-5, Buy American Act—Construction Materials, in solicitations and contracts for construction inside the United States.

SUBPART 25.3—BALANCE OF PAYMENTS PROGRAM

25.300 Scope of subpart.

This subpart provides policies and procedures applicable to contracting for supplies, services, or construction for use outside the United States and provides for the use of excess or near-excess foreign currency. The Balance of Payments Program restrictions have been waived with respect to the acquisition in accordance with Subpart 25.4 of certain products under the Trade Agreements Act of 1979.

25.301 Definitions.

“Components” (see 25.101).

“Domestic end product” (see 25.101).

“Domestic offer” (see 25.101).

“Domestic services,” as used in this subpart, means services performed in the United States. If services provided under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

“End product” (see 25.101).

“Foreign end product” (see 25.101).

“Foreign offer” (see 25.101).

“Foreign services,” as used in this subpart, means services other than domestic services.

“United States” (see 25.101).

25.302 Policy.

(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation’s balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.

(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:

(1) The estimated cost of the product or service does not exceed the appropriate small purchase limitation in Part 13.

(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.

(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).

(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.

(5) Subsistence items are required specifically for resale in overseas commissary stores.

(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.

(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).

(9) The end products or services are mined, produced, or manufactured in Panama and are required by and of the use of United States Forces in Panama.

(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.

25.303 Procedures.

(a) *Solicitation of offers.* The procedures in this section 25-6 (FAC 90-16)

apply to contracts for supplies and services when the exceptions in 25.302(b) do not apply. Solicitations shall state that information regarding articles, materials, supplies, and services excepted from these procedures is available to prospective contractors upon request. When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in paragraph (b) of this section.

(b) *Evaluation.* For purposes of evaluation, each foreign offer shall be adjusted by increasing it by 50 percent. If this procedure results in a tie between a foreign offer as evaluated and a domestic offer, the domestic offer shall be considered the successful offer. When this procedure results in the acquisition of foreign end products or services, the acquisition of domestic end products or services is thereby considered unreasonable in cost or inconsistent with the public interest.

25.304 Excess and near-excess foreign currencies.

(a) The United States holds currencies of certain countries in amounts determined annually by the Secretary of the Treasury to be excess to the normal, or above the immediate (near excess) requirements of the Government. These countries are identified in Bulletins issued by the Office of Management and Budget which will be distributed through agency procedures on an expedited basis. Additional information may also be obtained from the Department of the Treasury, Office of the Assistant Secretary for International Affairs, Office of Development Policy. Acquisitions of foreign end products, services, or construction paid for in excess or near-excess foreign currencies are an exception to the balance of payments restrictions in this subpart (see 25.302(b)(8)).

(b) Excess and near-excess foreign currencies shall be used whenever feasible in payment of contracts over \$1 million performed wholly or partly in any of the listed countries. In some cases, award may be made to an offeror willing to accept payment, in whole or part, in excess or near-excess foreign currency, even though the offer, when compared to offers in United States dollars, is not the lowest received. Price differentials may be funded from excess or near-excess foreign currencies available without charge to agency appropriations, subject to Office of Management and Budget (OMB) Circular No. A-20, May 21, 1966.

(c) Before issuing solicitations for contracts to be performed wholly or partly in the listed countries, the contracting officer shall obtain a determination from the agency head, or a designee no lower than the head of the contracting activity, as to the feasibility of using excess or near-excess foreign currency. Agency officials shall consult with the Budget Review Division, Office of Management and Budget, and verify—

proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subdivision shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

(ii) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. Contracting officers or their representatives should normally challenge increased costs where major revisions of existing compensation plans or new plans are introduced by the contractor, and the contractor—

(A) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation; and

(B) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

(c) *Labor-management agreements.* Notwithstanding any other requirements of this subsection 31.205-6, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in performing Government contracts, are determined to be unreasonable because they are either unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-

Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(d) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, stock (see subparagraph (f)(2) below regarding valuation), products, or services, and are allowable.

(e) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(2) Although the additional taxes in subparagraph (1) above may be considered in establishing foreign overseas differential, any increased compensation calculated directly on the basis of an employee's specific increase in income taxes is unallowable. Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.

(f) *Bonuses and incentive compensation.* (1) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment and the basis for the award is supported.

(2) When the costs of bonuses and incentive compensation are paid in the stock of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the stock shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available; and

(ii) Accruals for the cost of stock before issuing the stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the stock and that their interest in the accruals will be forfeited.

(3) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of subparagraph (f)(1) above and of paragraph (k) below.

(g) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) below.

(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law; (B) employer-employee agreement; (C) established policy that constitutes, in effect, an implied agreement on the contractor's part; or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in the contractor's plant.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(h) *Backpay.* (1) *Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other

violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to employees (union and nonunion) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employees based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(i) *Stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.*

(1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (k) of this subsection. The allowable cost of stock options is limited to the difference between the option price and the market price on the first date on which the option price and the number of shares are known. Accordingly, when the stock option price is equal to or greater than the market price on that date, then no costs are allowable for contract costing purposes.

(2) Stock appreciation rights are rights granted to employees by contractors to receive the increase in value, or appreciation, of company stock even though the employee neither purchases the stock nor receives title to it. Stock appreciation rights will be treated as deferred compensation and must comply with the requirements of paragraph (k) of this subsection. The allowable cost of stock appreciation rights is limited to the difference between the stock-appreciation-right base price from which appreciation will be measured and the market price on the first date on which both the number of shares and the stock-appreciation-right base price are known. Accordingly, when the stock-appreciation-right base price is equal to or greater than the market price on that date, then no costs are allowable for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends paid and any appreciation in the market price of the stock over the

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posals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

(e) Retainer fees, to be allowable, must be supported by evidence that—

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and

(4) The actual services performed are documented in accordance with paragraph (f) of this subsection.

(f) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the

service furnished. (See also 31.205-38(f).) However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include—

(1) Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;

(2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

(3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

31.205-34 Recruitment costs.

(a) Subject to paragraphs (b) and (c) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, the following costs are allowable:

(1) Costs of help-wanted advertising.

(2) Costs of operating an employment office needed to secure and maintain an adequate labor force.

(3) Costs of operating an aptitude and educational testing program.

(4) Travel costs of employees engaged in recruiting personnel.

(5) Travel costs of applicants for interviews.

(6) Costs for employment agencies, not in excess of standard commercial rates.

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Is for personnel other than those required to perform obligations under a Government contract;

(2) Does not describe specific positions or classes of positions;

(3) Is excessive relative to the number and importance of the positions or to the industry practices;

(4) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities;

(5) Is designed to "pirate" personnel from another Government contractor; or

(6) Includes color (in publications).

(c) Excessive compensation costs offered to prospective employees to "pirate" them from another Government contractor are unallowable. Such excessive costs may include salaries, fringe benefits, or special emoluments which are in excess of standard industry practices or the contractor's customary compensation practices.

31.205-35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to paragraphs (b) and (f) below:

(1) Cost of travel of the employee and members of the immediate family (see 31.205-46) and transportation of the household and personal effects to the new location.

(2) Cost of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer, except that these costs when added to the costs described in subparagraph (a)(4) below shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, after settlement date or lease date of new permanent residence, except that these costs when added to the costs described in subparagraph (a)(3) above, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in a new location, except that (i) these costs will not be allowable for existing employees or newly recruited employees who, before the relocation, were not homeowners and (ii) the total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were

not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in paragraph (a) above must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not otherwise be unallowable under Subpart 31.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in subparagraph (a)(5) above, a flat amount, not to exceed \$1,000, may be allowed in lieu of actual costs.

(c) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Costs incident to acquiring a home in a new location as follows:

(i) Real estate brokers fees and commissions.

(ii) Cost of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable).

PART 33

PROTESTS, DISPUTES, AND APPEALS

33.000 Scope of part.

This part prescribes policies and procedures for filing protests and for processing contract disputes and appeals.

SUBPART 33.1—PROTESTS

33.101 Definitions.

“Interested party for the purpose of filing a protest,” as used in this subpart, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“Protest,” as used in this subpart, means a written objection by an interested party to a solicitation by an agency for offers for a proposed contract for the acquisition of supplies or services or a written objection by an interested party to a proposed award or the award of such a contract.

33.102 General.

(a) Contracting officers shall consider all protests, whether submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (hereinafter cited as “ADP contracts”), the General Services Board of Contract appeals (GSBCA). The protestor shall be notified in writing of the final decision of the protest. (See 19.302 for protests of small business status and 22.608-3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)

(b) In accordance with 31 U.S.C. 1558, with respect to any protest filed with the GAO or GSBCA, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 90 working days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(c) An interested party wishing to protest—

(1) Is encouraged to seek resolution within the agency (see 33.103) before filing a protest with the GAO or the GSBCA;

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP contract with the GAO may not file a protest with the GSBCA with respect to that contract;

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP contract with GSBCA (40 U.S.C. 759(h)) may not file a protest with the GAO with respect to that contract.

33.103 Protests to the agency.

(a)(1) The objectives of the following procedures are to resolve agency protests effectively, to help build confidence in the Government's acquisition system, and to reduce protests to the GAO or GSBCA.

(2) When a protest is filed only with the agency, an award shall not be made until a decision on the agency's protest is issued, or the matter is otherwise resolved unless the contracting officer or other designated official first determines, in writing, that one of the following applies:

(i) The supplies or services to be contracted for are urgently required.

(ii) Delivery or performance will be unduly delayed by failure to make award promptly.

(iii) A prompt award will otherwise be advantageous to the Government.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the offerors whose offers might become eligible for award should be informed of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding with award under subparagraph (a)(2) of this section.

(4) Protests received after award filed only with the agency shall be handled in accordance with agency procedures. The contracting officer need not suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest. In this event, the contracting officer should consider seeking a mutual

agreement with the contractor to suspend performance on a no-cost basis.

(b) (1) Agency protests may be submitted by interested parties to the individual or location designated in the provision at 52.233-2, Service of Protest. The designated person is normally the contracting officer.

(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. The agency for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider any protest which is not filed timely.

(3) Protests shall include the following information:

(i) Name, address, and telephone number of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, including copies of relevant documents.

(iv) Request for a ruling by the agency.

(v) Statement as to the form of relief requested.

(4) Protests shall be concise, and logically presented to facilitate review by the agency. Failure to comply with any of the above requirements may be grounds for dismissal of the protest.

33.104 Protests to GAO.

This section implements the GAO's Bid Protest Regulations set forth at 4 CFR Part 21.

(a) *General procedures.* (1) A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 work day after the protest is filed with the GAO. The GAO may dismiss the protest if the protestor fails to furnish a complete copy of the protest within 1 work day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a substantial and reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately

begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 25 work days after the GAO notifies the agency by telephone that a protest has been filed, or within 10 work days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's written request for an extension. Any new date shall be documented in the agency's protest file.

(ii) The agency report to the GAO shall include, as appropriate, a copy of—

(A) The protest;

(B) The offer submitted by the protesting offeror;

(C) The offer which is being considered for award or which is being protested;

(D) All evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions;

(G) Any other documents that the agency determines are relevant to the protest;

(H) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;

(I) A list identifying the other parties who are being provided copies of the report; and

(J) A list of the documents withheld from the protestor and other interested parties, and the reasons for withholding them. The list shall identify any documents specifically requested by, and withheld from, the protestor.

(iii) In addition to the documents contained in the report, the agency shall make available to the GAO any documents specifically requested by the protestor.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protestor and other interested parties who have responded to the notice given under subparagraph (a)(2) of this section. A party shall receive all relevant documents, except—

(A) Those that the agency has decided to withhold from that party for any reason, including

those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and

(B) Protestor's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If, within 2 work days after receipt of the agency report, the protestor requests additional documents, the agency shall provide the requested documents to the GAO within 5 work days of receipt of the request.

(B) The additional documents shall also be provided to the protestor and other interested parties within this 5-work day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order. A request for a protective order to cover the additional documents shall be made in accordance with 33.104(a)(5) within this 5-work day period.

(C) The agency shall notify the GAO of any documents withheld from the protestor and other interested parties and shall state the reasons for withholding them.

(5) The GAO may issue a protective order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, but not more than 20 work days after the protest filing date, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 work days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. Within 1 work day after receipt of a copy of the request, any rebuttal shall be filed with the GAO, with copies furnished

simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within 1 work day after receipt of a copy of the request.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.

(6) The protestor and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 work days, 5 work days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 work days after the hearing.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.* (1) When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be

requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under subparagraph (b)(1) of this section.

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO after award of a contract, but within 10 calendar days after award, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed with the GAO more than 10 calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protestor, or other interested party who has responded to the notice in 33.104(a)(2). The GAO may designate representatives of the parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO for a fee. All parties may file comments on the hearing and report within 7 work days of the hearing.

(f) *GAO decision time.* GAO will issue its recommendation on a protest within 90 work days from the date of

filing of the protest with the GAO, or within 45 calendar days under the express option, unless GAO establishes a longer period of time.

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. section 3554(c), a recommended award of protest costs (as defined under paragraph (g) of this section) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. section 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g) of this section), agency personnel should consult the General Counsel's office of the agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g) of this section) which have not yet been paid.

33.105 Protests to GSBICA.

(a)(1) An interested party may protest an ADP acquisition subject to Section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759) by filing a protest with the GSBICA. ADP acquisition protests not covered under this statute may not be heard by the GSBICA, but may be heard by the agency, the courts, or GAO. A protestor shall furnish a copy of its complete protest to the official or location designated in the solicitation, or in the absence of such a designation to the contracting officer, on the same day the protest is filed with the GSBICA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest.

(2) The GSBICA procedures state that—

(i) Within one working day after receipt of a copy of the protest, the agency shall give either oral or written notice of the protest to all parties who were solicited or, if the solicitation has closed, only to those who submitted a sealed bid or offer; and

(ii) Written confirmation of notice and a listing of all persons and agencies receiving notice should be given to the Board within 5 working days after receipt of the protest.

(b) The GSBICA procedures state that within 10 work days after the filing of a protest, or such longer time as the

GSBCA may establish, the agency shall file with the GSBCA and all other parties a protest file. Except where the agency determines under appropriate authority to withhold classified or privileged information or information that would give a competitive advantage, the protest file shall include the following:

- (1) A contracting officer's decision, if any.
- (2) The contract, if any.
- (3) All relevant correspondence.
- (4) Affidavits or statements of witnesses on the matter under protest.

(5) All documents relied upon by the contracting officer in taking the action protested.

(6) A copy of the solicitation, the protestor's bid or proposal and, if bid opening has occurred and no contract has been awarded, a copy of any relevant bids and the bid abstract.

(7) In a negotiated acquisition, a copy of offers or proposals being considered for award and relevant to the protest should be included in the GSBCA file only, for *in camera* review by the Board. The agency shall serve all parties with a list of documents provided to the Board *in camera* review.

(8) Any additional existing evidence or information necessary to determine the merits of the protest.

(9) Any information otherwise withheld, where it is appropriate for *in camera* review by the Board.

(c) The GSBCA procedures state that within 15 work days after the filing of the protest, or such longer time as the Board may establish, the agency shall submit its answer to the Board setting forth its defenses to the protest and its findings, actions, and recommendations in the matter.

(d)(1) If a protest contains a timely request for a suspension of procurement authority, a hearing will be held whenever practicable but not later than 10 calendar days after the filing of the protest. The Board shall suspend the procurement authority unless the agency establishes that—

(i) Absent suspension, the contract award is likely within 30 calendar days; and

(ii) Urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision.

(2) Circumstances in (d)(1) above shall be established by a D&F executed by the agency head or designee.

(3) The Board's decision on suspension may be oral.

(e) A hearing on the merits, if requested, will be held within 25 work days after the filing of the protest and a GSBCA decision on the merits will be issued within 45 work days, unless the Board's chairman determines a longer period is required.

(f)(1) The GSBCA may declare an appropriate interested party to be entitled to the costs of—

(i) Filing and pursuing the protest, including reasonable attorney's fees; and

(ii) Bid and proposal preparation.

(2) Costs awarded under subparagraph (f)(1) of this section shall be paid out in accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund).

(g) The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in Subpart 33.2.

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than small purchases.

(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its *Alternate I*.

SUBPART 33.2—DISPUTES AND APPEALS

33.201 Definitions.

"Alternative dispute resolution" means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration.

"Claim," as used in this part, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$50,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.207. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

"Issue in controversy" means a material disagreement between the Government and the contractor related to a claim or which could result in a claim. An issue in controversy can be all or part of a claim.

"Misrepresentation of fact," as used in this part, means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

"Neutral person," as used in this subpart, means an

impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978 (41 U.S.C. 601-613)(the Act) as amended by the Administrative Dispute Resolution Act (Pub. L. 101-552) establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for: (a) the payment of interest on contractor claims; (b) certification of contractor claims; and (c) a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

33.203 Applicability.

(a) Except as specified in paragraph (b) below, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters "arising under" or "relating to" a contract. Agency Boards of Contract Appeals (BCA's) authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at 52.233-1, Disputes, recognizes the "all disputes" authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA's in the handling and deciding of contractor appeals under the Act.

33.204 Policy.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Agencies are encouraged to use alternative dispute resolution (ADR) procedures to the maximum extent practicable in accordance with the authority and the requirements of the Administrative Dispute

Resolution Act (Pub. L. 101-552) and agency policies.

33.205 Relationship of the Act to Public Law 85-804.

(a) Requests for relief under Public Law 85-804 (50 U.S.C. 1431-1435) are not claims within the Contract Disputes Act of 1978 or the Disputes clause at 52.233-1, Disputes, and shall be processed under Part 50, Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; i.e., legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes Act of 1978 and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor's allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Act. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) above may be cognizable as a request for relief under Public Law 85-804 as implemented by Part 50. However, the claim must first be submitted to the contracting officer for consideration under the Contract Disputes Act of 1978 because the claim is not cognizable under Public Law 85-804, as implemented by Part 50, unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted in writing to the contracting officer for a decision. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor.

33.207 Contractor claim certification.

(a) A contractor claim exceeding \$50,000, or any claim regardless of amount when using alternative dispute resolution procedures, shall be accompanied by a certification that—

- (1) The claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief; and
- (3) The amount requested accurately reflects the contract adjustment for which the contractor believes the

Government is liable.

(b) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar thresholds requiring claim certification are met (see the example in subdivision 15.804-2(a)(1)(ii)).

(c)(1) If the contractor is an individual, the certification shall be executed by that individual.

(2) If the contractor is not an individual, the certification shall be executed by—

(i) A senior company official in charge at the contractor's plant or location involved; or

(ii) An officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

33.208 Interest on claims.

The Government shall pay interest on a contractor's claim on the amount found due and unpaid from (a) the date the contracting officer receives the claim (properly certified if required by 33.207(a)), or (b) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. See 32.614 for the right of the Government to collect interest on its claims against a contractor.

33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or settle all claims arising under or relating to a contract subject to the Act. This authorization does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration office or contracting office, as appropriate; and

(4) Prepare a written decision that shall include a—

(i) Description of the claim or dispute;

(ii) Reference to the pertinent contract terms;

(iii) Statement of the factual areas of agreement and disagreement;

(iv) Statement of the contracting officer's decision, with supporting rationale;

(v) Paragraph substantially as follows:

This is the final decision of the Contracting Officer. You may appeal this decision to the Board of Contract Appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals and provide a copy to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. If you appeal to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of \$10,000 or less or its accelerated procedure for claims of \$50,000 or less; and

(vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(c) The contracting officer shall issue the decision within the following statutory time limitations:

(1) For claims of \$50,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over \$50,000, 60 days after receiving a certified claim; *provided, however*, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

(d) The contracting officer shall issue a decision within a reasonable time, taking into account—

(1) The size and complexity of the claim;

(2) The adequacy of the contractor's supporting data; and

(3) Any other relevant factors.

(e) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the agency BCA to direct the contracting officer to issue a decision in a specified time period determined by the BCA.

(f) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(g) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

33.212 Contracting officer's duties upon appeal.

To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, the contracting officer shall provide data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from the contracting officer's decision.

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, Section 6(b) of the Act authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending final decision on a claim relating to the contract. In recognition of this fact, an alternate paragraph is provided for paragraph (h) of the clause at 52.233-1, Disputes. This paragraph shall be used only as authorized by agency procedures.

(b) In all contracts that include the clause at 52.233-1, Disputes, with its Alternate I, in the event of a dispute not arising under, but relating to, the contract, the contracting officer shall consider providing, through appropriate agency procedures, financing of the continued performance;

provided, that the Government's interest is properly secured.

33.214 Alternative dispute resolution.

(a) The objective of using alternative dispute resolution (ADR) procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

- (1) Existence of an issue in controversy;
- (2) A voluntary election by both parties to participate in the ADR process;
- (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation;
- (4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy; and
- (5) Certification by the contractor in accordance with 33.207.

(b) ADR procedures may be used at any time that the contracting officer has authority to settle the issue in controversy and can be applied to a portion of a claim. When ADR procedures are used subsequent to issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

(c) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

33.215 Contract clause.

The contracting officer shall insert the clause at 52.233-1, Disputes, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I

PART 37—SERVICE CONTRACTING

37.203

services to be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR Part 300, Subpart E, Use of Private Sector Temporaries, and agency procedures.

SUBPART 37.2—ADVISORY AND ASSISTANCE SERVICES

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.201 Definition.

“Advisory and assistance services” means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.202 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.203 Types of advisory and assistance services.

Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—

(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, cur-

rent knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision-making.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decision-making. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development or decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

(d) *Engineering and technical service.* Engineering and technical services (technical representatives) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.204 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in Part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational support activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

PART 42—CONTRACT ADMINISTRATION

42.1405

(b) The possible application of reduced rates under section 10721 of the Interstate Commerce Act for shipments on commercial bills of lading and the Commercial Bill of Lading Notations clause are discussed at 47.104.

(c)(1) The limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed \$100, is prescribed in the Transportation Documentation and Audit Regulation, specifically 41 CFR 101-41.304-2.

(2) For DOD shipments, corresponding guidance is in Chapter 214 of the MTMR.

42.1404 Shipments by parcel post or other classes of mail.

42.1404-1 Parcel post eligible shipments.

(a)(1) Use of parcel post or other classes of mail permits direct movements from source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries of mailable matter that meet the size, weight, and distance limitations prescribed by the U.S. Postal Service. Parcel post eligible shipments for overseas destinations will not be sent via Small Package Delivery services or parcel post to CONUS military air or water terminals. These shipments will be mailed through the APO or FPO to the overseas user. Contractors shall not divide delivery quantities into mailable parcels for the purpose of avoiding shipments by other modes of transportation.

(2) When parcel post or other classes of mail are used by contractors, they shall prepay the postage costs by using their own mailing labels or stamps and include prepaid postage costs as separate items in the invoices for supplies shipped.

(b)(1) Authority for contractors to use indicia mail may be obtained by submitting Postal Service (PS) Form 3601, Application to Mail Without Affixing Postage Stamps, to the U.S. Postal Service for approval following agency procedures. If approval is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is used, the contractor will be provided with a completed PS Form 3601 and official penalty permit imprint mailing labels, envelopes, or cards printed on the top right side in a rectangular box: Postage and Fees Paid (first line); Government Agency Name (second line); and, the proper permit imprint number (G-000) on the third line. These must also bear in the upper left corner in every case the printed return address of the agency concerned above the printed phrases "Official Business" and "Penalty for Private Use, \$300." The name and address of a private person or firm shall not be shown.

(c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel immediately above the label in 1/4 inch block letters with (i) the name of the agency and (ii) the words "Official Mail-Contents for Official Use-Exempt from Customs Requirements." This permits identification and expedites handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when the contractor is to be reimbursed for the cost of postage.

(d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.

(b) The contracting officer shall insert the clause at 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

42.1405 Discrepancies incident to shipment of supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19, DLAR 4500.15.)

(b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also accountable for the supplies, and all claims or reports dealing with discrepancies shall be initiated at that point in accordance with the property accountability regulations of the agency concerned.

(c) If supplies are acquired on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is

a matter for settlement between the contractor and the carrier. However, the Government consignee shall (1) notify the carrier of the discrepancy by noting the exception on the carrier's delivery receipt and (2) furnish all available data to the CAO or appropriate agency office, which shall promptly transmit the data to the contractor.

42.1406 Report of shipment.**42.1406-1 Advance notice.**

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected

material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

PART 45

GOVERNMENT PROPERTY

45.000 Scope of part.

This part prescribes policies and procedures for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. It does not apply to providing property under any statutory leasing authority, except as to non-Government use of plant equipment under 45.407; to property to which the Government has acquired a lien or title solely because of partial, advance, or progress payments; or to disposal of real property.

SUBPART 45.1—GENERAL

45.101 Definitions.

(a) "Contractor-acquired property," as used in this part, means property acquired or otherwise provided by the contractor for performing a contract and to which the Government has title.

"Government-furnished property," as used in this part, means property in the possession of, or directly acquired by, the Government and subsequently made available to the contractor.

"Government property," means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in this section.

"Plant equipment," as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Property," as used in this part, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property.

"Real property," as used in this part, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Special test equipment," as used in this part, means

either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

"Special tooling," as used in this part, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(b) Additional definitions also applying throughout this part appear in those subparts where the terms are most frequently used.

45.102 Policy.

Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, if contractors possess Government property, agencies shall—

(a) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property;

(b) Require contractors to use Government property to the maximum practical extent in performing Government contracts;

(c) Permit the property to be used only when authorized;

(d) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;

(e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105);

(f) Require contractors to review and provide justification for retaining Government property not currently in use; and

(g) Ensure maximum practical reutilization of contractor inventory (see 45.601) within the Government.

45.103 Responsibility and liability for Government property.

(a) Contractors are responsible and liable for Government property in their possession, unless otherwise provided by the contract.

(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—

(1) Negotiated fixed-price contracts for which the contract price is not based upon (i) adequate price competition, (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (iii) prices set by law or regulation;

(2) Cost-reimbursement contracts;

(3) Facilities contracts; or

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

(c) When justified by the circumstances, the contract may require the contractor to assume greater liability for loss of or damage to Government property than that contemplated by the Government property clauses or the clause at 52.245-8, Liability for the Facilities. For example, this may be the case when the contractor is using Government property primarily for commercial work rather than Government work.

(d) If the Government provides Government property directly to a subcontractor, the terms of paragraph (b) above shall apply to the subcontractor.

(e) Subcontractors are liable for loss of or damage to Government property furnished through a prime contractor. However, if the prime contract is of a type listed in subparagraph (b)(1) or (2) above, the prime contractor may, after obtaining the contracting officer's consent, reduce the subcontractor's liability by including in the subcontract a clause similar to paragraph (g), Limited risk of loss, as provided in Alternate I of the clause at 52.245-2, Government Property (Fixed-Price Contracts), (for fixed-price contracts) or similar to the same paragraph of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (for cost-reimbursement contracts). Before consenting to a clause that reduces the subcontractor's liability, the contracting officer should ensure that the Government's interests are sufficiently protected.

(f) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

45.104 Review and correction of contractors' property control systems.

(a) The review and approval of a contractor's property control system shall be accomplished by the agency responsible for contract administration at a contractor's plant or installation. The review and approval of a contractor's property control system by one agency shall be binding on all other departments and agencies based on interagency agreements.

(b) The contracting officer or the representative assigned the responsibility as property administrator shall review contractors' property control systems to ensure compliance with the Government property clauses of the contract.

(c) The property administrator shall notify the contractor in writing when its property control system does not comply with Subpart 45.5 or other contract requirements and shall request prompt correction of deficiencies. If the contractor does not correct the deficiencies within a reasonable period, the property administrator shall request action by the contracting officer administering the contract. The contracting officer shall—

(1) Notify the contractor in writing of any required corrections and establish a schedule for completion of actions;

(2) Caution the contractor that failure to take the required corrective actions within the time specified will result in withholding or withdrawing system approval; and

(3) Advise the contractor that its liability for loss of or damage to Government property may increase if approval is withheld or withdrawn.

45.105 Records of Government property.

(a) Contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) below.

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor—(1) for repair or servicing and return to the shipping organization, (2) for use on a Government installation, (3) under a local support service contract, (4) under a contract with a short performance period, or (5) when otherwise determined by the contracting officer to be in the Government's interest.

45.106 Government property clauses.

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

(a) The contracting officer shall insert the clause at

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52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.

(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) below.

(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.

(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract with an educational or nonprofit organization is contemplated.

(e) When the cost of the item to be repaired does not exceed the small purchase limitation in section 13.000, purchase orders for property repair need not include a Government property clause.

(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) above.

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher edu-

cation or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.

SUBPART 45.2—COMPETITIVE ADVANTAGE**45.201 General.**

(a) The contracting officer shall, to the maximum practical extent, eliminate competitive advantage accruing to a contractor possessing Government production and research property (see 45.301). This is done by (1) adjusting the offers of those contractors by applying, for evaluation purposes only, a rental equivalent evaluation factor or, (2) when adjusting offers is not practical, by charging the contractor rent for using the property. Applying a rental equivalent factor is not appropriate in awarding negotiated contracts when the contracting officer determines that using the factor would not affect the choice of contractors.

(b) In evaluating offers, the contracting officer shall also consider any costs or savings to the Government related to providing such property, regardless of any competitive advantage that may result (see 45.202-3).

45.202 Evaluation procedures.**45.202-1 Rental equivalents.**

If a rental equivalent evaluation factor is used, it shall be equal to the rent allocable to the proposed contract that would otherwise have been charged for the property, as computed in accordance with the clause at 52.245-9, Use and Charges. (See 45.205(b) for solicitation requirements.)

45.202-2 Rent.

If using a rental equivalent evaluation factor is not practical, and the competitive advantage is to be eliminated by charging rent, any offeror or subcontractor may use Government production and research property after obtaining the written approval of the contracting officer having cognizance of the property. Rent shall be charged in accordance with 45.403.

45.202-3 Other costs and savings.

(a) If furnishing Government production and research property will result in direct measurable costs that the Government must bear, additional factors shall be considered in evaluating bids or proposals. These factors shall be specified in the solicitation either as dollar amounts or as formulas and shall be limited to the cost of—

- (1) Reactivation from storage;
- (2) Rehabilitation and conversion; and
- (3) Making the property available on an f.o.b. basis.

(b) If, under the terms of the solicitation, the contractor will bear the transportation cost of furnishing Government production and research property or the cost of making it suitable for use (such as when property is offered on an "as is" basis (see 45.308)), no additional evaluation factors related to those costs shall be used.

(c) If using Government production and research property will result in measurable savings to the Government, the dollar amount of these savings shall be specified in the solicitation and used in evaluating offers. Examples of such savings include—

(1) Savings occurring as a direct result of activating tools being maintained in idle status at known cost to the Government; and

(2) Avoiding the costs of deactivating and placing tools in layaway or storage or of maintaining them in an idle state, if the prospective costs are known. For these costs to be included in the evaluation, firm decisions must have been made that the tools will be laid away or stored if not used on the proposed contract and that such costs are not merely being deferred.

45.203 Postaward utilization requests.

When, after award, a contractor requests the use of special tooling or special test equipment, the administrative contracting officer shall obtain a fair rental or other adequate consideration if use is authorized. The value of the items, if known, and any amount included for them in the contract price shall be considered.

45.204 Residual value of special tooling and special test equipment.

(a) In awarding competitively negotiated contracts that permit the acquisition of special tooling or special test equipment, an evaluation may be made of the residual value of the property to the Government. This evaluation is appropriate when the contracting officer (1) determines that the property will have a reasonably foreseeable usefulness and related residual value beyond the period of use on the proposed contract and (2) anticipates that the cost of the property (as proposed by the several offerors) may be a factor in making the award. This evaluation is not appropriate if the contract will include the special tooling or special test equipment as a contract line item.

(b) The purpose of evaluating the residual value of special tooling or special test equipment is to apportion to each proposal only that part of the total cost of the property that represents the amount of useful life to be consumed during contract performance. Accordingly, the proposed price or cost may be reduced for evaluation purposes by an amount representing the residual value of such property to the Government. In estimating residual value, the contracting officer shall consider—

(1) The useful life of the special tooling and special test equipment to be acquired;

(2) Adaptability of the property for use by other contractors or by the Government;

(3) Reasonably foreseeable requirements for future use of the property; and

(4) The scrap or salvage value of the property.

(c) If the contracting officer decides to consider the residual value of special tooling or special test equipment, the solicitation shall so notify offerors and state the Government's reasonably foreseeable future requirements for the property.

45.205 Solicitation requirements.

(a) When Government production and research property (see 45.301) is offered for use in a competitive acquisition, solicitations will ordinarily require the contractor to assume all costs related to making the property available for use (such as payment of all transportation or rehabilitation costs).

(b) The solicitation shall describe the evaluation procedures to be followed, including rental charges or equivalents (see 45.202) and other costs or savings to be evaluated (see 45.202-3), and shall require all offerors to submit with their offers the following information:

(1) A list or description of all Government production and research property that the offeror or its subcontractors propose to use on a rent-free basis. The list shall include property offered for use in the solicitation, as well as property already in possession of the offeror and its subcontractors under other contracts.

(2) Identification of the facilities contract or other instrument under which property already in possession of the offeror and its subcontractors is held, and the written permission for its use from the contracting officer having cognizance of the property.

(3) The dates during which the property will be available for use (including the first, last, and all intervening months) and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support proration of the rent.

(4) The amount of rent that would otherwise be charged, computed in accordance with 45.403.

(c) Solicitations shall provide that using Government production and research property (other than as described and permitted in the solicitation (see paragraph (b) above)) will not be authorized under the contract unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with the clause at 52.245-9, Use and Charges, is charged, or the contract price is reduced by an equivalent amount. (See 45.203 for postaward requests for special tooling and special test equipment and 45.204(c) for solicitation requirements for special tooling and special test equipment with residual value.)

SUBPART 45.3—PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

45.300 Scope of subpart.

This subpart prescribes policies and procedures for pro-

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viding Government property to contractors.

45.301 Definitions.

“Agency-peculiar property,” as used in this subpart, means Government-owned personal property that is peculiar to the mission of one agency (e.g., military or space property). It excludes Government material, special test equipment, special tooling, and facilities.

“Facilities,” as used in this subpart and when used in other than a facilities contract, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property (see 45.101). It does not include material, special test equipment, special tooling, or agency-peculiar property.

“Facilities contract,” as used in this subpart, means a contract under which Government facilities are provided to a contractor or subcontractor by the Government for use in connection with performing one or more related contracts for supplies or services. It is used occasionally to provide special tooling or special test equipment. Facilities contracts may take any of the following forms:

(a) A facilities acquisition contract providing for the acquisition, construction, and installation of facilities.

(b) A facilities use contract providing for the use, maintenance, accountability, and disposition of facilities.

(c) A consolidated facilities contract, which is a combination of a facilities acquisition and a facilities use contract.

“Government production and research property,” as used in this subpart, means Government-owned facilities, Government-owned special test equipment, and special Blank Sidetooling to which the Government has title or the right to acquire title.

“Material,” as used in this subpart, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

“Nonprofit organization,” as used in this subpart, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

“Nonseverable,” as used in this subpart, when related to Government production and research property, means property that cannot be removed after erection or installation without substantial loss of value or damage to the property or to the premises where installed.

45.302 Providing facilities.**45.302-1 Policy.**

(a) Contractors shall furnish all facilities required for performing Government contracts except as provided in this subsection. Government facilities provided to contractors shall be individually identified in the solicitation, if possible, and contract. Agencies shall not furnish facilities

to contractors for any purpose, including restoration, replacement, or modernization, except as follows:

(1) For use in a Government-owned, contractor-operated plant operated on a cost-plus-fee basis.

(2) For support of industrial preparedness programs.

(3) As components of special tooling or special test equipment acquired or fabricated at Government expense.

(4) When, as a result of the prospective contractor's written statement asserting inability to obtain facilities, the agency head or designee issues a Determination and Finding (see Subpart 1.7) that the contract cannot be fulfilled by any other practical means or that it is in the public interest to provide the facilities.

(i) If the contractor's inability to provide facilities is due to insufficient lead time, the Government may provide existing facilities until the contractor's facilities can be installed.

(ii) Mere assertion by a contractor that it is unable to provide facilities is not, in itself, sufficient to justify approval. Appropriate Government officials must determine that providing Government facilities is justified.

(iii) The determination shall include findings that private financing of the facilities was sought but not available or that private financing was determined not advantageous to the Government. The determination shall also state that the contract cannot be accomplished without Government facilities being provided.

(iv) The original determination shall be included in the contract file.

(v) No determination is required when the facilities are provided as components of special tooling or special test equipment acquired or fabricated at Government expense.

(5) As otherwise authorized by law or regulation.

(b) Agencies shall not—

(1) Furnish new facilities to contractors unless existing Government-owned facilities are either inadequate or cannot be economically furnished;

(2) Use research and development funds to provide contractors with new construction or improvements of general utility, unless authorized by law; or

(3) Provide facilities to contractors solely for non-Government use, unless authorized by law.

(c) Competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into a contractor's plant, unless adequate price competition cannot be otherwise obtained. Such solicitations shall require contractors to identify the Government-owned facilities desired to be moved into their plants.

(d) Government facilities with a unit cost of less than \$10,000 shall not be provided to contractors unless—

(1) The contractor is a nonprofit institution of higher education or other nonprofit organization whose primary

purpose is the conduct of scientific research;

(2) A contractor is operating a Government-owned plant on a cost-plus-fee basis;

(3) A contractor is performing on a Government establishment or installation;

(4) A contractor is performing under a contract specifying that it may acquire or fabricate special tooling, special test equipment, and components thereof subsequent to obtaining the approval of the contracting officer; or

(5) The facilities are unavailable from other than Government sources.

45.302-2 Facilities contracts.

(a) Facilities shall be provided to a contractor or subcontractor only under a facilities contract using the appropriate clauses required by 45.302-6, except as provided in 45.302-3.

(b) All facilities provided by a contracting activity for use by a contractor at any one plant or general location shall be governed by a single facilities contract, unless the contracting officer determines this to be impractical. Each agency should consolidate, to the maximum practical extent, its facility contracts covering specific contractor locations.

(c) No fee shall be allowed under a facilities contract. Profit or fee (plus or minus) shall be considered in awarding any related supply or service contract, consistent with the profit guidelines of Subpart 15.9.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when administratively desirable.

(e) Agencies shall ensure that facility projects involving real property transactions comply with applicable laws (e.g., 10 U.S.C. 2676 and 41 U.S.C. 12 and 14).

45.302-3 Other contracts.

(a) Facilities may be provided to a contractor under a contract other than a facilities contract when one of the following exceptions applies:

(1) The actual or estimated cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed \$1,000,000;

(2) The number of items of plant equipment provided is ten or fewer;

(3) The contract performance period is twelve months or less;

(4) The contract is for construction;

(5) The contract is for services and the facilities are to be used in connection with the operation of a Government-owned plant or installation; or

(6) The contract is for work within an establishment or installation operated by the Government.

(b) When a facilities contract is not used, the

Government's interest shall normally be protected by using the appropriate Government property clause or, in the case of subparagraph (a)(5) of this subsection, by appropriate portions of the facilities clauses.

(c) No profit or fee shall be allowed on the cost of the facilities when purchased for the account of the Government under other than a facilities contract. General purpose components of special tooling or special test equipment are not facilities.

45.302-4 Contractor use of Government-owned and -operated test facilities.

(a) Agencies may authorize onsite use by contractors of existing Government-owned and -operated test facilities in connection with Government contracts only when—

(1) No adequate commercial test capability is available;

(2) Substantial cost savings will result from using the Government-owned test facilities; or

(3) Otherwise authorized by law.

(b) When such use is authorized, the contracting officer shall obtain adequate consideration comparable to commercial rates.

45.302-5 Standby or layaway requirements.

A facilities contract may include requirements for maintenance and storage of Government production and research property in standby or layaway status. The contract shall include appropriate specifications for the care and maintenance of the property. If the Government is required to pay the contractor for maintenance and storage, the contract shall define what constitutes standby or layaway and specify when payments will begin and end. The contract may provide for reimbursing the contractor for any State or local property tax it is required to pay because of its possession of or interest in such property (see 31.205-41).

45.302-6 Required Government property clauses for facilities contracts.

(a) The contracting officer shall insert the clause at 52.245-7, Government Property (Consolidated Facilities), in solicitations and contracts when a consolidated facilities contract is contemplated (see 45.301).

(b) The contracting officer shall insert the clause at 52.245-8, Liability for the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated (see 45.301).

(c) The contracting officer shall insert the clause at 52.245-9, Use and Charges, in solicitations and contracts (1) when a consolidated facilities contract or a facilities use contract (see 45.301), or (2) when a fixed-price contract is contemplated, and Government production and research property is provided other than on a rent-free basis.

(d) The contracting officer shall insert the clause at 52.245-10, Government Property (Facilities Acquisition), in solicitations and contracts when a facilities acquisition contract is contemplated (see 45.301).

(e)(1) The contracting officer shall insert the clause at 52.245-11, Government Property (Facilities Use), in solicitations and contracts when a facilities use contract is contemplated (see 45.301).

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education, or is awarded to a nonprofit organization whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

45.302-7 Optional property-related clauses for facilities contracts.

(a) The contracting officer may insert the clause at 52.245-12, Contract Purpose (Nonprofit Educational Institutions), in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(b) The contracting officer may insert the clause at 52.245-13, Accountable Facilities (Nonprofit Educational Institutions), in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(c) The contracting officer may insert the clause at 52.245-14, Use of Government Facilities, in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(d) The contracting officer may, under a proper delegation of authority, insert the clause at 52.245-15, Transfer of Title to the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated for the conduct of basic or applied research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.015 and 45.302-6).

(e) The contracting officer may insert the clause at 52.245-16, Facilities Equipment Modernization, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated under which the Government will provide modernized or replacement facilities.

45.303 Providing material.

45.303-1 Policy.

Contractors shall ordinarily furnish all material for performing Government contracts. However, agencies should provide material to a contractor when necessary to achieve

significant economy, standardization, or expedited production, or when it is otherwise in the Government's interest.

45.303-2 Procedures.

Solicitations shall specify material that the Government will furnish in sufficient detail (including requisitioning procedures) to enable offerors to evaluate it accurately. The contracting officer shall insert the appropriate Government property clause prescribed in 45.106, in all solicitations when the Government will provide material.

45.304 Providing motor vehicles.

(a) Contractors shall ordinarily furnish any motor vehicles needed in performing Government contracts. Agencies may provide contractors with motor vehicles only when—

(1) The number of vehicles required for use by contractor personnel is predictable and expected to remain fairly constant;

(2) The proposed contract will bear the entire cost of the vehicle program;

(3) The motor vehicles will not be used on any contract other than that for which the vehicles were provided, unless approved by the appropriate department or agency official;

(4) Prospective contractors do not have or would not be expected to have an existing and continuing capability for providing the vehicles from their own resources; and

(5) Substantial savings are expected.

(b) Agencies that provide contractors with Government-owned-or-leased motor vehicles are responsible for ensuring that such vehicles are used only for the performance of the contract. Under 41 CFR 101-38.301-1, contractors are prohibited from using such vehicles for home-to-work transportation consistent with Pub. L. 99-550 amending 31 U.S.C. 1344. (See Subpart 51.2, Contractor Use of Interagency Fleet Management System (IFMS) Vehicles.)

45.305 Reserved.

45.306 Providing special tooling.

45.306-1 Providing existing special tooling.

(a) The contracting officer shall offer existing Government special tooling to prospective contractors for use in Government work if it will not disrupt programs of equal or higher priority, it is otherwise advantageous to the Government, and use of the special tooling is authorized under 45.402(a). (See also 45.308 and 45.309.)

(b) Contracts authorizing the furnishing of existing special tooling shall contain a description of the special tooling, the terms and conditions of shipment, and the terms covering the cost of adapting and installing the tooling.

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45.306-2 Special tooling under cost-reimbursement contracts.

Title to special tooling under cost-reimbursement contracts is acquired by the Government in all cases. The clause used for this purpose is 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

45.306-3 Special tooling under fixed-price contracts.

(a) *Criteria for acquisition.* In deciding whether or not to acquire title to special tooling, or rights to title, under fixed-price contracts, the contracting officer shall consider the following factors:

(1) The current or probable future need of the Government for the items involved (including in-house use) and the estimated cost of producing them if not acquired.

(2) The estimated residual value of the items.

(3) The administrative burden and other expenses incident to reporting, recordkeeping, preparation, handling, transportation, and storage.

(4) The feasibility and probable cost of making the items available to other offerors in the event of future acquisitions.

(5) The amount offered by the contractor for the right to retain the items.

(6) The effect on future competition and contract pricing.

(b) *Decision not to acquire special tooling.* In contracts in which the Government will not acquire title to special tooling, or rights to title, special requirements may be included in the Schedule of the contract (e.g., requirement governing the contractor's capitalization of special tooling costs).

45.306-4 Reserved.**45.306-5 Contract clause.**

The contracting officer shall insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when a fixed-price contract is contemplated, and either the contract will include special tooling provided by the Government or the Government will acquire title or right to title in special tooling to be acquired or fabricated by the contractor for the Government, other than special tooling to be delivered as an end item under the contract. The Special Tooling clause shall apply to all special tooling accountable to the contract.

45.307 Providing special test equipment.**45.307-1 General.**

(a) Contracting officers shall offer existing Government-owned special test equipment to contractors, consistent with the conditions in 45.306-1(a). (See also 45.308 and 45.309.)

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(b) Contracting officers may also authorize contractors to acquire special test equipment for the Government when it is advantageous to the Government under the criteria in 45.306-3(a) and existing special test equipment is not available.

45.307-2 Acquiring special test equipment.

(a) When special test equipment or components are known, the solicitation (and the contract) shall separately identify each item to be furnished by the Government or acquired or fabricated by the contractor for the Government. Individual items of less than \$5,000 may be grouped by category.

(b) *Notice and approval.* Under negotiated contracts containing the clause at 52.245-18, Special Test Equipment, the contractor must notify the contracting officer if it intends to acquire or fabricate special test equipment. Within 30 days of receipt of the notice, the contracting officer shall—

(1) Review the proposed items for necessity and proper classification as “special” test equipment;

(2) Screen the availability of existing Government-owned test equipment in accordance with agency procedures; and

(3) Notify the contractor, approving or disapproving the acquisition or fabrication and, if it is disapproved, state whether the equipment will be furnished by the Government.

45.307-3 Contract clause.

The contracting officer shall insert the clause at 52.245-18, Special Test Equipment, in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipment for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown.

45.308 Providing Government production and research property “as is.”**45.308-1 General.**

(a) The contracting officer may provide Government production and research property on an “as is” basis for performing fixed-price, time-and-material, and labor-hour contracts. It may also be furnished under a facilities contract, in which case the contract shall state that the contractor will not be reimbursed for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

(b) When the property is provided under other than a facilities contract, the solicitation shall state that—

(1) Offerors may inspect the property before submitting offers and the conditions under which it may be inspected;

(2) The property is offered in its current condition,

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information furnished to the contractor by the Government or generated or acquired by the contractor under the contract and for which title vests in the Government. The requirements of this subpart do not otherwise apply to such property.

45.505-10 Records of completed products.

The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no time lapse between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts that provide for the contractor to retain completed products for further use under the contract or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as required by this subpart.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to the Government, and other pertinent data necessary to determine that a proper accounting for all property has been made.

45.505-11 Records of transportation and installation costs of plant equipment.

(Note: This subsection 45.505-11 does not apply to nonprofit organizations.)

(a) *Transportation costs.* (1) The contractor shall record within the property control system the transportation and installation costs directly borne by the Government for each item of Government-owned plant equipment with an acquisition cost of \$5,000 or more. The administrative contracting officer may require the contractor to provide such recorded costs for use in computing rental charges.

(2) If transportation costs are not included in the price of equipment delivered, the contractor shall contact the property administrator for instructions for obtaining applicable freight data.

(b) *Installation costs.* (1) When the contractor performs installation, the cost shall be computed in accordance with the contractor's accounting system (if the system is acceptable for other contract cost determination purposes) and recorded in the property record.

(2) When installation is subcontracted, the contractor shall record the cost paid to the subcontractor in the property record.

(3) When installation costs are included in the price of equipment delivered to the using location, the property

records should be so annotated.

45.505-12 Records of misdirected shipments.

The contractor's property control system shall provide the following information regarding each misdirected shipment of Government property received:

- (a) Identity of shipment, such as shipping document or bill of lading.
- (b) Origin of shipment.
- (c) Content (items in the shipment) per shipping documents, if available.
- (d) Location.
- (e) Disposition.

45.505-13 Records of property returned for rework.

(a) The contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to the Government. The contractor shall establish item records under its property control system and shall include the information required in 45.505-1.

(b) The records shall specify the quantity of units returned to the Government and the quantity otherwise disposed of with proper authority.

45.505-14 Reports of Government property.

(a) The contractor's property control system should provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations, in the following classifications (property classifications may be varied to meet individual agency needs):

- (1) Land and rights therein.
- (2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.
- (3) Plant equipment of \$5,000 or more.
- (4) Plant equipment of less than \$5,000.

(b) The contractor shall report the information under paragraph (a) as directed by the contracting officer.

45.506 Identification.

(a) Upon receipt of Government property, the contractor shall promptly—

- (1) Identify the property in accordance with agency regulations;
- (2) Mark the property in accordance with this section; and
- (3) Record the property in its property control records.

(b)(1) Except for the following, all Government property shall be marked with an indication of Government ownership:

- (i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools)

where adequate physical control is maintained over the items.

(ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.

(iii) Material that is commingled, as authorized by 45.507.

(iv) Where the property administrator agrees that marking is impractical.

(2) Exempted items shall be entered and described on the accountable property records.

(c)(1) In addition to marking with an indication of Government ownership, the following property shall be marked with a serial number in accordance with procedures approved by the property administrator:

(i) Special tooling.

(ii) Special test equipment.

(iii) Components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) Plant equipment.

(v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

(2) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.

(3) If the property is included in a standard agency registration system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator from the owning agency.

(d) The markings in paragraphs (b) and (c) of this section shall be—(1) securely affixed to the property, (2) legible, and (3) conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor shall promptly notify the property administrator and ask for the item to be exempted (see paragraph (b) of this section). Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

45.507 Segregation of Government property.

Government property shall be kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled—

(a) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;

(b) When approved by the property administrator in connection with research and development contracts;

(c) When material is included in a multicontract cost

and material control system (however, see 45.505-3(f));

(d) When (1) scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable, (2) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (3) Government contracts involved are fixed-price and provide for the retention of the scrap by the contractor; or

(e) When otherwise approved by the property administrator.

45.508 Physical inventories.

The contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. The contractor, with the approval of the property administrator, shall establish the type, frequency, and procedures. These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. Type and frequency of inventory should be based on the contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor, but may vary with the types of property being controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

45.508-1 Inventories upon termination or completion.

(a) *General.* Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (b) below.

(b) *Exception.* The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; *provided*, that—

(1) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(2) The contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(c) *Listings for disposal purposes.* (Note: This paragraph (c) applies only to nonprofit organizations.)

(1) Standard items that have been modified may be

described on listings for disposal purposes as standard items with a general description of the modification.

(2) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

45.508-2 Reporting results of inventories.

The contractor shall, as a minimum, submit the following to the property administrator promptly after completing the physical inventory:

(a) A listing that identifies all discrepancies disclosed by a physical inventory.

(b) A signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

45.508-3 Quantitative and monetary control.

When requested by the contracting officer, the contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

45.509 Care, maintenance, and use.

The contractor shall be responsible for the proper care, maintenance, and use of Government property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

45.509-1 Contractor's maintenance program.

(a) Consistent with the terms of the contract, the contractor's maintenance program shall provide for—

(1) Disclosure of need for and the performance of preventive maintenance;

(2) Disclosure and reporting of need for capital rehabilitation; and

(3) Recording of work accomplished under the program.

(b) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least—

(1) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;

(2) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;

(3) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(4) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(5) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;

(6) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and

(7) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(c) The contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.

(d) The contractor shall keep records of maintenance actions performed and any deficiencies in the Government property discovered as a result of inspections.

45.509-2 Use of Government property.

(a) The contractor's procedures shall be in writing and adequate (1) to assure that Government property will be used only for those purposes authorized in the contract and that any required approvals will be obtained, and (2) to provide a basis for determining and allocating rental charges.

(b) With respect to plant equipment with an acquisition value of \$5,000 or more, the procedures, as a minimum, shall—

(1) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);

(2) Provide for recording authorized and actual use consistent with the established use levels;

(3) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and

(4) Provide for prompt reporting to the contracting officer of all plant equipment for which retention is not justified.

45.510 Property in possession of subcontractors.

The contractor shall require any of its subcontractors possessing or controlling Government property to adequately care for and maintain that property and assure that it is used only as authorized by the contract. The contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.

45.511 Audit of property control system.

The Government may audit the contractor's property
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control system as frequently as conditions warrant. These audits may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.

SUBPART 45.6—REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

45.600 Scope of subpart.

This subpart establishes policies and procedures for the reporting, redistribution, and disposal of Government property excess to contracts and of property that forms the basis of a claim against the Government (e.g., termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance or progress payments that have been liquidated.

45.601 Definitions.

“Common item,” as used in this subpart, means material that is common to the applicable Government contract and the contractor’s other work.

“Contractor-acquired property” (see 45.101).

“Contractor inventory,” as used in this subpart, means—

(a) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(b) Any property that the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(c) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

“Government-furnished property” (see 45.101).

“Government property” (see 45.101).

“Line item,” as used in this subpart, means a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract at any one reporting location.

“Personal property,” as used in this subpart, means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

“Plant clearance,” as used in this subpart, means all actions relating to the screening, redistribution, and disposal of contractor inventory from a contractor’s plant or work

site. The term “contractor’s plant” includes a contractor-operated Government facility.

“Plant clearance officer,” as used in this subpart, means an authorized representative of the contracting officer assigned responsibility for plant clearance.

“Plant clearance period,” as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

“Plant equipment” (see 45.101).

“Precious metals,” as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property administrator” (see 45.501).

“Public body” means any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

“Real property” (see 45.101).

“Reportable property,” as used in this subpart, means contractor inventory that must be reported for screening in accordance with this subpart before disposition as surplus.

“Reporting activity,” as used in this subpart, means the Government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

“Salvage” (see 45.501).

“Scrap” (see 45.501).

“Screening completion date,” as used in this subpart, means the date on which all screening required by this subpart is to be completed. It includes screening within the Government and the donation screening period.

“Serviceable or usable property,” as used in this subpart, means property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

“Special test equipment” (see 45.101).

“Special tooling” (see 45.101).

“Surplus property,” as used in this subpart, means contractor inventory not required by any Federal agency.

“Surplus Release Date (SRD),” as used in this subpart, means the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.

“Termination inventory,” as used in this subpart, means any property purchased, supplied, manufactured, furnished,

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or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

“Work-in-process” (see 45.501).

45.602 Reserved.**45.603 Disposal methods.**

An agency may exercise its rights to require delivery of any contractor inventory. If the agency does not exercise these rights, the contractor inventory shall be disposed of by one of the following methods in the priority indicated:

(a) Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired property (see 45.605-1).

(b) Return of contractor-acquired property to suppliers (see 45.605-2).

(c) Use within the Government through the use of prescribed screening procedures (see 45.608).

(d) Donation to eligible donees (see 45.609).

(e) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor) (see 45.610).

(f) Donation to public bodies in lieu of abandonment (see 45.611).

(g) Abandonment or destruction (see 45.611).

45.604 Restrictions on purchase or retention of contractor inventory.

A contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory is subject to any contract provisions and to applicable Government restrictions on the disposition of property that is classified for security reasons, possesses military offensive or defensive characteristics, or is dangerous to public health, safety, or welfare.

45.605 Contractor-acquired property.**45.605-1 Purchase or retention at cost.**

(a) The plant clearance officer shall encourage contractors to purchase or retain contractor-acquired property at cost. However, the contractor shall not include any part of the cost of property purchased or retained in any claim for reimbursement against the Government. Under cost-reimbursement contracts, appropriate adjustments shall be made for previously reimbursed costs. When the property is for use on a continuing Government contract or commercial operation, handling and transportation charges may be considered an allowable cost (included in the contractor's settlement proposal as “other costs” in the case of a termination), provided that the charges are reasonable.

(b) If a contractor purchases or retains contractor inventory for use on a continuing Government contract that is subsequently terminated, the property shall be allocated to the continuing contract, even though its purchase would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other Government contracts, the contractor terminates subcontracts under the other Government contracts, reasonable termination charges of the subcontracts may be included as an allocable cost under the contract that generated the excess property.

45.605-2 Return to suppliers.

The plant clearance officer shall encourage contractors to return allocable quantities of contractor-acquired property to suppliers for full credit less either the supplier's normal restocking charge or 25 percent of the cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges, but not for the cost of the returned property. Under cost-reimbursement contracts, appropriate adjustments shall be made for costs previously reimbursed. A contractor's property control system shall include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible.

45.605-3 Cost-reimbursement contracts.

Under cost-reimbursement contracts, property purchased or retained by the contractor or returned to suppliers shall not be reported on inventory schedules. The cognizant contract administration office, in coordination with the cognizant auditor, shall periodically review such transactions to protect the Government's interests.

45.606 Inventory schedules.**45.606-1 Submission.**

(a) When property is no longer needed to perform the contract, the contractor shall prepare inventory schedules in accordance with the contract and instructions from the plant clearance officer and shall promptly submit the schedules to the cognizant contract administration office. Detailed instructions and requirements governing preparing and submitting inventory schedules are contained in 45.606-5. Agencies may use special inventory schedules for intra-agency screening of particular categories of contractor inventory (e.g., plant equipment of \$5,000 or more). Such schedules may also be used for screening with other Federal agencies after coordination with GSA.

(b) The certificate on the inventory schedule must be executed when contractor inventory is reported. The prime contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

45.606-2 Common items.

The contractor's inventory schedules shall not include any items that the contractor can reasonably use on other work without financial loss. However, the schedules shall include common items specified by the contracting officer for delivery to the Government or which are Government-furnished property.

45.606-3 Acceptance.

(a) Within 15 days after receipt of inventory schedules, the plant clearance officer shall review them, determine their acceptability, and request the contractor to correct any inadequate listings. Inventory schedules should not be rejected if the information is adequate for disposal purposes, even if complete cost data on work-in-process are not available. Rejection shall be limited, when possible, to specific items and shall not necessarily render the entire schedule unacceptable. If substantial errors are discovered that were not apparent on termination inventory schedules previously found acceptable, the final phase of a plant clearance period shall not begin until corrected schedules have been submitted, unless the plant clearance officer determines otherwise.

(b) The plant clearance officer, with the assistance of other Government personnel as necessary, shall verify that (1) the inventory is present at the location indicated, (2) the inventory is allocable to the contract, (3) the quantity and condition are correctly stated, and (4) the contractor has endeavored to divert items to other work. The verification may be recorded on SF 1423, *Inventory Verification Survey*. The plant clearance officer shall require the contractor to promptly correct any discrepancies on the inventory schedule or resubmit the schedule as necessary.

45.606-4 Withdrawals.

If, before final disposition, the contractor becomes aware that any items of contractor-acquired property listed in the inventory schedules are usable on other work without financial loss, the contractor shall purchase the items or retain them at cost and amend the inventory schedules and claim accordingly. Upon notifying the plant clearance officer, the contractor may purchase or retain at cost any other items of property included in the inventory schedules. Withdrawal of any Government-furnished property is subject to the written approval of the plant clearance officer. If withdrawal is requested after screening has started, the plant clearance officer shall notify immediately the appropriate screening activity.

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(a) *Use of forms.* The contractor shall report contractor inventory on the following forms, as appropriate.

(1) *Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form)* and *SF 1427, Inventory*

Schedule A—Continuation Sheet. These forms are to be used to list metals in raw or primary form as furnished by the mill and on which there has been no subsequent fabricating operations. They are also to be used for listing nonmetallic materials, such as plastics, rubber, or lumber, in mill product form. They are not to be used for listing castings or forgings, which shall be reported on SF 1428.

(2) *Standard Form 1428, Inventory Schedule B* and *SF 1429, Inventory Schedule B—Continuation Sheet.* These forms are to be used to list all contractor inventory (including plant equipment) for which Standard Forms 1426, 1430, 1432, or 1434 are not appropriate. However, agencies may direct listing of particular categories of plant equipment on agency forms when standard forms are not appropriate. (See 45.505-6 and 45.606-1(a).)

(3) *Standard Form 1430, Inventory Schedule C (Work in Process)* and *SF 1431, Inventory Schedule C—Continuation Sheet.* These forms are to be used to list all work in process.

(4) *Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment)* and *SF 1433, Inventory Schedule D—Continuation Sheet.* These forms are to be used to list such contractor inventory as dies, jigs, gauges, fixtures, special tools, and special test equipment.

(5) *Standard Form 1434, Termination Inventory Schedule E.* This is a short form to be used with SF 1438, *Settlement Proposal (Short Form)*. Applicability is limited to termination settlement proposals under \$10,000.

(b) Submission.

(1) Contractors shall report contractor inventory promptly after determining it to be excess, unless a later date is authorized by the contract or the plant clearance officer.

(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the plant clearance officer at the cognizant contract administration office.

(3) The standard inventory schedule forms may be reproduced by contractors, provided no change is made in size or format. Machine listings may be submitted if all essential elements of data are included and the appropriate signed standard form is submitted as a cover sheet.

(4) The appropriate continuation sheet shall be used when more than one page is needed.

(5) Partial schedules may be submitted when they cover substantial portions of a particular property classification of contractor inventory. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

ties as provided in the contract, unless specifically provided for otherwise.

(b) If contracts are with educational institutions and the Government Property clause at 52.245-2, Alternate II, or 52.245-5, Alternate I, is used, title to property having an acquisition cost of less than \$5,000 shall vest in the contractor as provided in the clause. Agencies may provide higher thresholds, if appropriate.

51.107 Contract clause.

The contracting officer shall insert the clause at 52.251-1, Government Supply Sources, in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source. If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate I.

SUBPART 51.2—CONTRACTOR USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES

51.200 Scope of subpart.

This subpart prescribes policies and procedures for the use by contractors of interagency fleet management system (IFMS) vehicles and related services. In this subpart, the terms “contractors” and “contracts” include “subcontractors” and “subcontracts” (see 45.304).

51.201 Policy.

(a) If it is in the Government’s interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency fleet management system (IFMS) vehicles and related services, including (1) fuel and lubricants, (2) vehicle inspection, maintenance, and repair, (3) vehicle storage, and (4) commercially rented vehicles for short-term use.

(b) Complete rebuilding of major components of contractor-owned or -leased equipment requires the approval of the contracting officer in each instance.

(c) Government contractors shall not be authorized to obtain interagency fleet management system (IFMS) vehicles and related services for use in performance of any contract other than a cost-reimbursement contract, except as otherwise specifically approved by the Administrator of the General Services Administration at the request of the agency involved.

51.202 Authorization.

(a) The contracting officer may authorize a cost-reimbursement contractor to obtain interagency fleet management system (IFMS) vehicles and related services, if the contracting officer has—

(1) Determined that the authorization will accomplish the agency’s contractual objectives and effect demonstrable economies;

(2) Received evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of an interagency fleet management system vehicle (IFMS);

(3) Arranged for periodic checks to ensure that authorized contractors are using vehicles and related services exclusively under cost-reimbursement contracts;

(4) Ensured that contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts (see 41 CFR 101-38.301-1);

(5) Received a written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of interagency fleet management vehicles (IFMS) and services not related to the performance of the contract; and

(6) Considered any recommendations of the contractor.

(b) The authorization shall—

(1) Be in writing;

(2) Cite the contract number;

(3) Specify any limitations on the authority, including its duration, and any other pertinent information; and

(4) Instruct the contractor to comply with the applicable policies and procedures provided in this subpart.

(c) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(d) Contracting officers authorizing contractor use of interagency fleet management system (IFMS) vehicles and related services subject their agencies to the responsibilities and liabilities provided in 41 CFR 101-39.4 regarding accidents and claims.

51.203 Means of obtaining service.

(a) Authorized contractors shall submit requests for interagency fleet management system (IFMS) vehicles and related services in writing to the appropriate GSA regional Federal Supply Service Bureau, Attention: Regional fleet manager, except that requests for more than five vehicles shall be submitted to General Services Administration, FBF, Washington, DC 20406, and not to the regions. Each request shall include the following:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and period of use.

(3) A list of the contractor’s employees who are authorized to request vehicles and related services.

(4) A listing of the make, model, and serial numbers

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of contractor-owned or-leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) Contractors requesting unusual quantities of vehicles should do so as far in advance as possible to facilitate availability.

51.204 Use of interagency fleet management system (IFMS) vehicles and related services.

Contractors authorized to use interagency fleet management system (IFMS) vehicles and related services shall comply with the requirements of 41 CFR 101-39 and 41

CFR 101-38.301-1 and the operator's packet furnished with each vehicle. See 41 CFR 101-6.4 for additional guidance for home-to-work use of Government vehicles.

51.205 Contract clause.

The contracting officer shall insert the clause at 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize the contractor to use interagency fleet management system (IFMS) vehicles and related services.

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**SUBPART 52.3—PROVISION AND CLAUSE
 MATRIX**

52.300 Scope of subpart.
 52.301 Solicitation provisions and contract clauses
 (Matrix).

cation or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

(R 7-402.24, clause paragraphs (e), (f),
and (g) 1971 APR)

Alternate II (APR 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.204-3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:

TAXPAYER IDENTIFICATION (SEP 1992)

(a) Definitions.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or

partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.

(c) Taxpayer Identification Number (TIN).

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. _____

(d) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) Common Parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

52.205 Reserved.

52.206 Reserved.

52.207-1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

NOTICE OF COST COMPARISON
(SEALED-BID) (FEB 1993)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost comparison form.

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review for a period of [insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv))] working days, beginning with the date the documents are available to interested parties. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedures. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

NOTICE OF COST COMPARISON
(NEGOTIATED) (FEB 1993)

(a) This solicitation is part of a Government cost com-

parison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economical alternative after (i) completion of a public review period of [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) During the public review period, directly affected

parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT

(NOV 1991)

(a) The Contractor shall give Government employees

who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

(End of clause)

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

(The next page is 52-17.)

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notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(End of provision)

52.214-34 Submission of Offers in the English Language.

As prescribed in 14.201-6(x), 15.407(l), and 25.407(d), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency.

As prescribed in 14.201-6(y), 15.407(m), and 25.407(d), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

52.215-1 Examination of Records by Comptroller General.

As prescribed in 15.106-1(b), insert the following clause:

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (FEB 1993)

(a) This clause applies if this contract exceeds the small purchase limitation in Part 13 of the Federal Acquisition Regulation (FAR) and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcon-

tracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding the FAR Part 13 small purchase limitation; and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

(End of clause)

(R 7-104.15 1975 JUN)

(R 1-7.103-3)

52.215-2 Audit—Negotiation.

As prescribed in 15.106-2(b), insert the following clause:

AUDIT—NEGOTIATION (FEB 1993)

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) *Cost or pricing data.* If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all of the Contractor's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), including computations and projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and

currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause.

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that are over the small purchase limitation in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

Alternate I (APR 1984). In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

Alternate II (FEB 1993). In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:

(g) The provisions of OMB Circular No. A-133 "Audits of Institutions of Higher Learning and Other Nonprofit Institutions" apply to this contract.

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52.215-3 Solicitation for Information or Planning Purposes.

As prescribed in 15.405-2, insert the following provision on the face of each solicitation (other than those excluded by 15.401) issued for information or planning purposes:

SOLICITATION FOR INFORMATION OR PLANNING PURPOSES (APR 1984)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205-18, Bid and proposal (B&P) costs, of the Federal Acquisition Regulation.

(b) This solicitation is issued for the purpose of: [state purpose].

(End of provision)

(R 1-309)

52.215-4 Notice of Possible Standardization.

As prescribed in 15.407(b), insert the following provision:

NOTICE OF POSSIBLE STANDARDIZATION (APR 1985)

If the supplies for which this solicitation has been issued are established as standard, future contracts for the required supplies may be awarded without providing for full and open competition under section 6.302-1 of the Federal Acquisition Regulation.

(End of provision)

52.215-5 Solicitation Definitions.

As prescribed 15.407(c)(1), insert the following provision:

SOLICITATION DEFINITIONS (JUL 1987)

"Government" means United States Government.

"Offer" means "proposal" in negotiation.

"Solicitation" means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation.

(End of provision)

52.215-6 Type of Business Organization.

As prescribed in 15.407(c)(2), insert the following provision:

TYPE OF BUSINESS ORGANIZATION (JUL 1987)

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as ☐ a corporation incorporated under the laws of the State of _____, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(b) If the offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _____.

(country)

(End of provision)

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

52.222-45 Reserved.

52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories,

since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).

As prescribed in 22.1006(d) and 22.1012-3(d)(1), insert the following clause:

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of clause)

52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.

As prescribed in 22.1006(e)(1), insert the following clause:

able for that increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

(R 7-2101.3(b) 1976 OCT)

52.237-7 Indemnification and Medical Liability

Insurance.

As prescribed in 37.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (SEP 1989)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____ *

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of

the contract term must also be provided.

(d) A certificate of insurance evidencing the required coverage shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

52.237-8 and 52.237-9 Reserved.

52.238 through 52.241 Reserved.

52.242-1 Notice of Intent to Disallow Costs.

As prescribed in 42.802, insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract provid-

ing for price redetermination is contemplated:

NOTICE OF INTENT TO DISALLOW COSTS

(APR 1984)

(a) Notwithstanding any other clause of this contract—

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)

(R 7-203.35 1978 AUG)

52.242-2 Production Progress Reports.

As prescribed in 42.1107(a), insert the following clause:
PRODUCTION PROGRESS REPORTS (APR 1991)

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding \$25,000 or 5 percent of the amount of this contract, whichever is less.

(End of clause)

52.242-3 through 52.242-9 Reserved.

52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.

As prescribed in 42.1404-2(a), insert the following clause in solicitations and contracts when f.o.b origin shipments are to be made using Government bills of lading or prepaid postage:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR PREPAID POSTAGE (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system, as appropriate, with postage costs prepaid by the Contractor.

Any direct charge for postage costs shall be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by Contractors is not authorized. Quantities shall not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

(R 7-104.85(a) 1977 DEC)

52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404-2(b), insert the following clause:
F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR INDICIA MAIL (FEB 1993)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal System, using "Penalty Permit Imprint" indicia labels.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

52.242-12 Report of Shipment (REPSHIP).

REPORT OF SHIPMENT (REPSHIP) (DEC 1989)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing

20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (i.e., within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii, respectively) destination (other than a port for export). The notice shall be transmitted by rapid means (electrical if necessary) to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. When the length of time in transit will permit other than electrical means of transmission to provide the information 24 hours before the arrival of the shipment, the Government bill of lading, commercial bill of lading, or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer via United States mail. This document shall be prominently identified by the Contractor as being a "Report of Shipment" or "REPSHIP FOR T.O."

Message Example:

REPSHIP FOR T.O. 81 JUN 01

TRANSPORTATION OFFICER

DEFENSE DEPOT, MEMPHIS, TENN.

SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS
MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE,
VIA XX-YY*

IN CAR NO. XX 123456**-GBL***-C98000031****
CONTRACT DLA ETA*****-JUNE 5 JONES &
CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document
and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)

52.242-13 Bankruptcy.

As prescribed in 42.903, insert the following clause:

BANKRUPTCY (APR 1991)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government

contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

52.243-1 Changes—Fixed-Price.

As prescribed in 43.205(a)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—FIXED-PRICE (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Alternate I (APR 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one

or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(R 7-1902.2 1971 NOV)

Alternate II (APR 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government, in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(R 7-1902.2 1971 NOV)

(R 7-103.2 1958 JAN)

(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

(R 7-607.3 1972 APR)

Alternate IV (APR 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Specifications.
- (2) Work or services.
- (3) Place of origin.
- (4) Place of delivery.
- (5) Tonnage to be shipped.
- (6) Amount of Government-furnished property.

(R 1-7.703-2)

Alternate V (APR 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a)(1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

- (1) Drawings, designs, or specifications.
- (3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.

(R 7-304.1 1965 JUN)

(R 1-7.304-1)

52.243-2 Changes—Cost-Reimbursement.

As prescribed in 43.205(b)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—COST-REIMBURSEMENT (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

nished within 60 days of the date that the item is determined to be excess. The Contractor shall include in this list the information prescribed in Format of lists, subparagraph (i)(3) of this clause, as well as the applicable excess code as follows:

Code V. Excess to contract requirements with no follow-on requirements.

Code W. Excess to contract requirements but can be used to support actual or anticipated follow-on requirements.

Code X. Excess due to changes in design or specification of the end items.

Code Y. Excess due to nonserviceable or non-repairable condition.

Code Z. Other.

(ii) *Termination inventory.* These items shall be submitted on SF 1432 or by computer list attached to an SF 1432 in accordance with FAR 45.606. Format and content of this submission will be as prescribed by Format of lists, subparagraph (i)(3) of this clause, but will contain information as prescribed by FAR Subpart 45.6, in effect on the date of award of this contract.

(3) *Format of lists.* Lists furnished by the Contractor shall state the type of list and shall include all information from subparagraph (f)(1), Records, of this clause, items (i) through (xi). All lists will be grouped by primary retention code as prescribed in subdivision (f)(1)(ii)(A) of this clause and further listed in tool part number sequence.

(4) *Distribution of lists.* The Contractor shall submit two copies of lists to each of the following recipients unless otherwise directed:

(i) The Contracting Officer.

(ii) The Administrative Contracting Officer.

(iii) The inventory control point designated by the contracting office.

(j) *Disposition instructions.* The Contracting Officer shall provide the Contractor with written disposition instructions within 180 days of receipt of the list as prescribed by subparagraph (i)(1) of this clause and within 90 days of the receipt of excess special tooling lists reported in accordance with subparagraph (i)(2) of this clause. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (j)(1) through (j)(3) of this clause, or a combination of such methods. The Contractor shall comply with such disposition instructions.

(1) The Contracting Officer may identify specific items of special tooling to be retained or give the Contractor a list specifying the products, parts, or services including follow-on requirements for which the Government may require special tooling and request the Contractor to identify all usable items of special tooling on hand that were designed for or used in the production or performance of such products, parts, or services.

Once items of usable special tooling required by the Government are identified, the Contracting Officer may—

(i) Direct the Contractor to transfer specified items of special tooling to follow-on contracts requiring their use. Those items shall be furnished for use on the contract(s) as specified by the Contracting Officer and shall be subject to the provisions of the gaining contract(s); or

(ii) Request the Contractor to enter into an appropriate storage contract for special tooling specified to be retained by the Contractor for the Government. Tooling to be stored shall be stored pursuant to a storage contract between the Government and the Contractor; or

(iii) Direct the Contractor to transfer title to the Government (to the extent not previously transferred) and deliver to the Government those items of special tooling which are specified for removal from the Contractor's plant.

(2) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling not specified by the Government pursuant to subparagraph (j)(1) of this clause. To the extent that the Contractor incurs any costs occasioned by compliance with such direction, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract. The net proceeds of all sales shall either be credited to the cost of contract performance or shall be otherwise paid to the Government as directed by the Contracting Officer. Sale of special tooling to the prime Contractor or any of its subcontractors is subject to the prior written approval of the Contracting Officer.

(3) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or right in specified special tooling.

(4) *Restoration of Contractor's premises.* Unless otherwise provided in this contract, the Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if special tooling is withdrawn or if other special tooling is substituted, then the equitable adjustment under paragraph (m) of this clause may properly include restoration or rehabilitation costs.

(k) *Access to special tooling.* The Contractor shall provide access to special tooling subject to this clause at all reasonable times to all individuals designated by the Contracting Officer.

(l) *Storage or shipment.* The Contractor shall promptly arrange for either the shipment or the storage of special tooling specified in accordance with the final disposition instructions in subdivisions (j)(1)(ii) or (j)(1)(iii) of this

clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. All operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed shall accompany special tooling to be shipped or stored or shall otherwise be provided to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs costs for storage, shipment, packing, crating, or handling under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(m) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

- (1) Any delay in delivery of Government-furnished special tooling;
- (2) Delivery of Government-furnished special tooling in a condition not suitable for its intended use;
- (3) A decrease in or substitution of special tooling; or
- (4) Failure to repair or replace Government-furnished special tooling for which the Government is responsible.

(n) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontract appropriate provisions to obtain Government rights and data comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree in writing that such rights are not of interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

52.245-18 Special Test Equipment.

As prescribed in 45.307-3, insert the following clause:

SPECIAL TEST EQUIPMENT (FEB 1993)

(a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except founda-

tions and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(b) The Contractor may either acquire or fabricate special test equipment at Government expense when the equipment is not otherwise itemized in this contract and the prior approval of the Contracting Officer has been obtained. The Contractor shall provide the Contracting Officer with a written notice, at least 30 days in advance, of the Contractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall also include an estimated aggregate cost of all items and components of the equipment the individual cost of which is less than \$5,000, and the following information on each item or component of equipment costing \$5,000 or more:

(1) The end use application and function of each proposed special test unit, identifying special characteristics and the reasons for the classification of the test unit as special test equipment.

(2) A complete description identifying the items to be acquired and the items to be fabricated by the Contractor.

(3) The estimated cost of the item of special test equipment or component.

(4) A statement that intra-plant screening of Contractor and Government-owned special test equipment and components has been accomplished and that none are available for use in performing this contract.

(c) The Government may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Contractor. Such Government-furnished items shall be subject to the Government Property clause, except that the Government shall not be obligated to deliver such items any sooner than the Contractor could have acquired or fabricated them after expiration of the 30-day notice period in paragraph (b) of this clause. However, unless the Government notifies the Contractor of its decision to furnish the items within the 30-day notice period, the Contractor may proceed to acquire or fabricate the equipment or components subject to any other applicable provisions of this contract.

(d) The Contractor shall, in any subcontract that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Contractor shall furnish the names of such subcontractors to the Contracting Officer.

(e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Contractor shall comply with paragraph (b) above. In so complying, the Contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(End of clause)

52.301 Solicitation provisions and contract clauses (Matrix).

Key:

Principle type and/or purpose of contract:

P or C = Provision or Clause
IBR = Is Incorporation By Reference
authorized?

UCF = Uniform Contract Format Section,
when applicable

R = Required
A = Required-When-Applicable
O = Optional

✓ = Revision

FP SUP = Fixed-Price Supply
CR SUP = Cost-Reimbursement Supply
FP R&D = Fixed-Price Research & Development
CR R&D = Cost-Reimbursement Research & Development
FP SVC = Fixed-Price Service
CR SVC = Cost Reimbursement Service
FP CON = Fixed-Price Construction
CR CON = Cost Reimbursement Construction
T&M LH = Time & Material/Labor Hours
LMV = Leasing of Motor Vehicles

COM SVC = Communication Services
DDR = Dismantling, Demolition, or Removal
of Improvements
A-E = Architect-Engineering
FAC = Facilities
IND DEL = Indefinite Delivery
TRN = Transportation
SP = Small Purchases
UTL SVC = Utility Services

Provision or Clause	Prescribed In	P or C	IBR C	UCF I
52.202-1 Definitions	2.201	C	Yes	I
Alternate I	2.201	C	Yes	I
52.203-1 Officials Not to Benefit.	3.102-2	C	Yes	I
52.203-2 Certificate of Independent Price Determination	3.103-1	P	No	K
52.203-3 Gratuities.	3.202	C	Yes	I
52.203-4 Contingent Fee Representation and Agreement.	3.404(b)	P	No	K
52.203-5 Covenant Against Contingent Fees.	3.404(c)	C	Yes	I
52.203-6 Restrictions on Subcontractor Sales to the Government.	3.503-2	C	Yes	I
52.203-7 Anti-Kickback Procedures	3.502-3	C	Yes	I
52.203-8 Requirement for Certificate of Procurement Integrity.	3.104-10(a)	P	No	K
Alternate I	3.104-10(a)	P	No	K
52.203-9 Requirement for Certificate of Procurement Integrity —Modification.	3.104-10(b)	C	No	I

Principle Type and/or Purpose of Contract															
FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP T&M LH	CR T&M LH	COM SVC	DDR	A-E	FAC	IND DEL	TRN
R	R	A	R	R	R	R	R	R	R	R	R	R	R	R	R
						R					R	R			
A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A		A		A				A	A	A	A	A	✓
A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	✓
R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
R	R			R	R									R	R
R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																			
					FP SUP	CR SUP	FP R&D	CR R&D	SVC	FP SVC	CR SVC	FP CON	CR CON	CR T&M	LMV	SVC	COM	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC
52.214-26 Audit—Sealed Bidding.	14.201-7(a)	C	Yes	I	A					A					A	A	A					A	A	
52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7(b)(1)	C	Yes	I	A					A					A	A	A					A	A	
52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7(c)(1)	C	Yes	I	A					A					A	A	A					A	A	
52.214-29 Order of Precedence—Sealed Bidding.	14.201-7(d)	C	Yes	I	A					A					A	A	A					A	A	
52.214-30 Annual Representations and Certifications—Sealed Bidding.	14.201-6(u)	P	No	K	A					A					A	A	A					A	A	
52.214-31 Facsimile Bids.	14.201-6(w)	P	Yes	L	A					A					A	A	A					A	A	
52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).	14.201-6(c)(4)	P	Yes	L	A					A					A	A	A					A	A	
52.214-33 Late Submissions, and Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).	14.201-6(v)	P	Yes	L	A					A					A	A	A					A	A	
52.214-34, Submission of Offers in the English Language	14.201-6(x) 15.407(k) 25.407(c)	P	Yes		A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A
52.214-35, Submission of Offers in U.S. Currency	14.201-6(y) 15.407(l) 25.407(c)	P	Yes		A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A
52.215-1 Examination of Records by Comptroller General.	15.106-1(b)	C	Yes	I	A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A
52.215-2 Audit—Negotiation.	15.106-2(b)	C	Yes	I	A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A
Alternate I	15.106-2(b)	C	Yes	I															R					
52.215-3 Solicitation for Information or Planning Purposes.	15.405-2	P	Yes	L	A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A
52.215-4 Notice of Possible Standardization.	15.407(b)	P	Yes	L	O	O									O							O		
52.215-5 Solicitation Definitions.	15.407(c)(1)	P	Yes	L	A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A
52.215-6 Type of Business Organization.	15.407(c)(2)	P	No	K	A	A	A	A	A	A					A	A	A	A	A	A	A	A	A	A

[illegible]

Provision or Clause	Prescribed In	P or C	IBR	UCF
52.237-6 Incremental Payment by Contractor to Government.	37.304(c)	C	Yes	I
52.237-7 Indemnification and Medical Liability Insurance.	37.403	C	Yes	I
52.237-8 Reserved.				
52.237-9 Reserved.				
52.238 Reserved.				
52.239 Reserved.				
52.240 Reserved.				
52.241 Reserved.				
52.242-1 Notice of Intent to Disallow Costs.	42.802	C	Yes	I
52.242-2 Production Progress Reports.	42.1107(a)	C	Yes	I
52.242-3 Reserved.				
52.242-4 Reserved.				
52.242-5 Reserved.				
52.242-6 Reserved.				
52.242-7 Reserved.				
52.242-8 Reserved.				
52.242-9 Reserved.				
52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.	42.1404-2(a)	C	Yes	I
52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.	42.1404-2(b)	C	Yes	I
52.242-12 Report of Shipment (REPSHIP).	42.1406-2	C	Yes	I
52.242-13 Bankruptcy	42.903	C	Yes	I

53.221 Reserved.**53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).**

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

- (a) Reserved.
- (b) *SF 99 (DOL), Notice of Award of Contract.*
- (c) *SF 308 (DOL) (5/85), Request for Determination and Response to Request.* (See 22.404-3(a) and (b).)
- (d) *SF 1093 (GAO) (10/71), Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.* (See 22.406-9(c)(1).)
- (e) *SF 1413 (REV. 6/89), Statement and Acknowledgment.* SF 1413 is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in 22.406-5.
- (f) *SF 1444 (10/87), Request for Authorization of Additional Classification and Rate.* (See 22.406-3(a) and 22.1019.)
- (g) *SF 1445 (10/87), Labor Standards Interview.* (See 22.406-7(b).)
- (h) *SF 1446 (10/87), Labor Standards Investigation Summary Sheet.* (See 22.406-8(d).)
- (i) *Form WH-347 (DOL), Payroll (For Contractor's Optional Use).* (See 22.406-6(a).)

53.223 — 53.227 Reserved.**53.228 Bonds and insurance.**

The following standard forms are prescribed for use for bond and insurance requirements, as specified in Part 28:

- (a) *SF 24 (REV. 1/90), Bid Bond.* (See 28.106-1.)
- (b) *SF 25 (REV. 1/90), Performance Bond.* (See 28.106-1(b).)
- (c) *SF 25-A (REV. 1/90), Payment Bond.* (See 28.106-3(c).)
- (d) *SF 25-B (REV. 10/83), Continuation Sheet* (For Standard Forms 24, 25, and 25-A). (See 28.106-1(d).)
- (e) *SF 28 (REV. 1/90), Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).)
- (f) *SF 34 (REV. 1/90), Annual Bid Bond.* (See 28.106-1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (g) *SF 35 (REV. 1/90), Annual Performance Bond.* (See 28.106-1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (h) *SF 273 (REV. 8/90) Reinsurance Agreement for a Miller Act Performance Bond.* (See 28.106-1(h) and 28.202-1(a)(4).)
- (i) *SF 274 (REV. 8/90), Reinsurance Agreement for a*

Miller Act Payment Bond. (See 28.106-1(i) and 28.202-1(a)(4).)

(j) *SF 275 (REV. 8/90), Reinsurance Agreement in Favor of the United States.* (See 28.106-1(j) and 28.202-1(a)(4).)

(k) *SF 1414 (10/83), Consent of Surety.* (See 28.106-1(k).)

(l) *SF 1415 (11/87), Consent of Surety and Increase of Penalty.* (See 28.106-1(l).) SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(m) *SF 1416 (1/90), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(n) *OF 90 (REV. 1/90), Release of Lien on Real Property.* (See 28.106-1(n) and 28.203-5(a).) OF 90 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(o) *OF 91 (1/90), Release of Personal Property from Escrow.* (See 28.106-1(o) and 28.203-5(a).) OF 91 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.229 Taxes (SF's 1094, 1094-A).

SF 1094 (REV. 10/83), U.S. Tax Exemption Certificate, and SF 1094-A (REV. 10/83), Tax Exemption Certificates Accountability Record. SF's 1094 and 1094-A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).

53.230 — 53.231 Reserved.**53.232 Contract financing (SF 1443).**

SF 1443 (10/82), Contractor's Request for Progress Payment. SF 1443 is prescribed for use in obtaining contractors' requests for progress payments, as specified in 32.503-1.

53.233 — 52.234 Reserved.**53.235 Research and development contracting (SF 298).**

SF 298 (2/89), Report Documentation Page. SF 298 is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in 35.010.

53.236 Construction and architect-engineer contracts.**53.236-1 Construction.**

The following forms are prescribed, as stated below,
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for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

(a) *SF 1417 (REV. 8/90), Presolicitation Notice (Construction Contract)*. SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be \$100,000 or more and may be used if the proposed contract is estimated to be less than \$100,000, as specified in 36.701(a).

(b) *SF 1420 (10/83), Performance Evaluation - Construction Contracts*. SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(e).

(c) Reserved.

(d) Reserved.

(e) *SF 1442 (4/85), Solicitation, Offer and Award (Construction, Alteration, or Repair)*. SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the small purchase limitation for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the small purchase limitation), as specified in 36.701(b).

(f) *OF 347 (10/83), Order for Supplies or Services*. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts of \$10,000 or less for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).

(g) *OF 1419 (11/88), Abstract of Offers—Construction, and OF 1419A (11/88), Abstract of Offers—Construction, Continuation Sheet*. OF's 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal information), as specified in 36.701(d).

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) *SF 252 (REV. 10/83), Architect-Engineer Contract*. SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) *SF 254 (REV. 11/92), Architect-Engineer and Related Services Questionnaire*. SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1).

(c) *SF 255 (REV. 11/92), Architect-Engineer and Related Services Questionnaire for Specific Project*. SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254

regarding the prospective firm's qualifications for a particular architect-engineer project.

(d) *SF 1421 (10/83), Performance Evaluation (Architect-Engineer)*. SF 1421 is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in 36.702(c).

53.237 — 53.241 Reserved.

53.242 Contract administration.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(f).

53.243 Contract modifications (SF 30).

SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in (a) amending solicitations, whether advertised or negotiated, as specified in 14.208, 15.410, and 43.301, (b) modifying purchase and delivery orders, as specified in 13.503(b), and (c) modifying contracts, as specified in 42.1203(f), 43.301, 49.602-5, and elsewhere in this regulation. Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

53.244 Reserved.

53.245 Government property.

The following forms are prescribed, as specified below, for use in reporting, redistribution, and disposal of contractor inventory (defined in 45.601) and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property)*. (See 45.608-2(b)(2), 45.608-5(d)(1), and 45.608-8.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet)*. (See 45.610-1(c).)

(c) *SF 1423 (REV. 12/88), Inventory Verification Survey.* (See 45.606-3(b).)

(d) *SF 1424 (REV. 7/89), Inventory Disposal Report.* (See 45.615.) *SF 1424* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(e) Reserved.

(f) *SF 1426 (REV. 7/89), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form).* (See 45.606 and 49.602-2(e).) Standard Form 1426 and Standard Form 1427 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(g) *SF 1428 (REV. 7/89), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B-Continuation Sheet.* (See 45.606 and 49.602-2(b).) Standard Form 1428 and Standard Form 1429 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(h) *SF 1430 (REV. 7/89), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process).* (See 45.606 and 49.602-2(c).) Standard Form 1430 and Standard Form 1431 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(i) *SF 1432 (REV. 7/89), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment).* (See 45.606 and 49.602-2(d).) Standard Form 1432 and Standard Form 1433 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(j) *SF 1434 (REV. 7/89), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).* (See 45.606 and 49.602-2(e).) Standard Form 1434 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.246 Reserved.

53.247 Transportation (U.S. Government Bill of Lading).

The U.S. Government Bill of Lading, prescribed in 41 CFR 101-41.304, shall be used for transportation of property, as specified in 47.103.

53.248 Reserved.

53.249 Termination of contracts.

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 49.6:

(1) *SF 1034 (GAO), Public Voucher for Purchases and Services Other than Personal.* (See 49.302(a).)

(2) *SF 1435 (REV. 7/89), Settlement Proposal (Inventory Basis).* (See 49.602-1(a).) Standard Form 1435 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(3) *SF 1436 (REV. 7/89), Settlement Proposal (Total Cost Basis).* (See 49.602-1(b).) Standard Form 1436 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(4) *SF 1437 (REV. 7/89), Settlement Proposal for Cost-Reimbursement Type Contracts.* (See 49.602-1(c) and 49.302.) Standard Form 1437 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(5) *SF 1438 (REV. 7/89), Settlement Proposal (Short Form).* (See 49.602-1(d).) Standard Form 1438 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(6) *SF 1439 (REV. 7/89), Schedule of Accounting Information.* (See 49.602-3.) Standard Form 1439 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(7) *SF 1440 (REV. 7/89), Application for Partial Payment.* (See 49.602-4.) Standard Form 1440 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) The inventory schedule forms prescribed in 53.245(f) through (j) shall be used to support termination settlement proposals listed in paragraph (a), above, as specified in 49.602-2.

53.250 Reserved.

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. *OF 347*, prescribed in 53.213(e), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).

SUBPART 53.3—ILLUSTRATIONS OF FORMS

53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

53.301 Standard forms.

This section illustrates the standard forms that are specified by the FAR for use in acquisitions. The forms are illustrated in (FAC 90-16) 53-7

trated in numerical order. The subsection numbers correspond with the standard form numbers (e.g., Standard Form 18 appears as 53.301-18).

53.302 Optional forms.

This section illustrates the optional forms that are specified by the FAR for use in acquisitions. The numbering

system is as indicated in 53.301.

53.303 Agency forms.

This section illustrates agency forms that are specified by the FAR for use in acquisitions. The forms are arranged numerically by agency. The numbering system is as indicated in 53.301.

STANDARD FORM (SF) 254 Architect-Engineer and Related Services Questionnaire	Form Approved OMB No. 9000-0004 Expires 7-31-94
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D. C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0004), Washington, D. C. 20503.	
<p>Purpose:</p> <p>The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire," is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.</p>	<p>"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.</p> <p>Instructions for Filing (Numbers below correspond to numbers contained in form):</p> <ol style="list-style-type: none"> 1. Type accurate and complete name of submitting firm, its address, and zip code. <ol style="list-style-type: none"> 1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.) 2. Provide date the firm was established under the name shown in question 1. 3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date. 4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.). <p>Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Woman-owned (See 48 CFR 19.101 and 52.219-9).</p> <ol style="list-style-type: none"> 5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest-tier owner. <ol style="list-style-type: none"> 5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment. 6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters. 7. Beginning with the submitting office, list name, location, total number of personnel, and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services. <ol style="list-style-type: none"> 7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.) 8. Show total number of employees, by discipline, in submitting office. (*If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines--sociologists, biologists, etc. -- and number of people in each, in blank spaces.
<p>Definitions:</p> <p>"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.</p> <p>"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e., Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.</p> <p>"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.</p> <p>"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.</p> <p>"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.</p> <p>"Consultant," as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.</p> <p>"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.</p>	<p>"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.</p> <p>Instructions for Filing (Numbers below correspond to numbers contained in form):</p> <ol style="list-style-type: none"> 1. Type accurate and complete name of submitting firm, its address, and zip code. <ol style="list-style-type: none"> 1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.) 2. Provide date the firm was established under the name shown in question 1. 3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date. 4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.). <p>Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Woman-owned (See 48 CFR 19.101 and 52.219-9).</p> <ol style="list-style-type: none"> 5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest-tier owner. <ol style="list-style-type: none"> 5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment. 6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters. 7. Beginning with the submitting office, list name, location, total number of personnel, and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services. <ol style="list-style-type: none"> 7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.) 8. Show total number of employees, by discipline, in submitting office. (*If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines--sociologists, biologists, etc. -- and number of people in each, in blank spaces.

 STANDARD FORM 254 (REV. 11-92)
 Prescribed by GSA - FAR (48 CFR) 53.236-2(b)

254-104

 NSN 7540-01-152-8073
 Previous edition not usable.

STANDARD
FORM (SF)
254
**Architect-Engineer
and Related Services
Questionnaire**

9. Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last five years, most recent year first. Fee summaries should be broken down to reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

INDEX

- | | |
|-----------------------------|--------------------------------|
| 1. Less than \$100,000 | 5. \$1 million to \$2 million |
| 2. \$100,000 to \$250,000 | 6. \$2 million to \$5 million |
| 3. \$250,000 to \$500,000 | 7. \$5 million to \$10 million |
| 4. \$500,000 to \$1 million | 8. \$10 million or greater |

10. Select and enter, in numerical sequence, **not more than thirty** (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully reviewing list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (new firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the

owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employee of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11

- | | | |
|---|--|---|
| 001 Acoustics, Noise Abatement | 042 Harbors; Jetties; Piers, Ship Terminal Facilities | 086 Radar: Sonar; Radio & Radar Telescopes |
| 002 Aerial Photogrammetry | 043 Heating; Ventilating; Air Conditioning | 087 Railroad; Rapid Transit |
| 003 Agricultural Development; Grain Storage; Farm Mechanization | 044 Health Systems Planning | 088 Recreation Facilities (<i>Parks, Marinas, Etc.</i>) |
| 004 Air Pollution Control | 045 Highrise; Air-Rights-Type Buildings | 089 Rehabilitation (<i>Buildings; Structures; Facilities</i>) |
| 005 Airports; Navals; Airport Lighting; Aircraft Fueling | 046 Highways; Streets; Airfield Paving Parking Lots | 090 Resource Recovery; Recycling |
| 006 Airports; Terminals & Hangars; Freight Handling | 047 Historical Preservation | 091 Radio Frequency Systems & Shieldings |
| 007 Arctic Facilities | 048 Hospital & Medical Facilities | 092 Rivers; Canals; Waterways; Flood Control |
| 008 Auditoriums & Theatres | 049 Hotels; Models | 093 Safety Engineering; Accident Studies; OSHA Studies |
| 009 Automation; Controls; Instrumentation | 050 Housing (<i>Residential, Multi-Family; Apartments; Condominiums</i>) | 094 Security Systems; Intruder & Smoke Detection |
| 010 Barracks; Dormitories | 051 Hydraulics & Pneumatics | 095 Seismic Designs & Studies |
| 011 Bridges | 052 Industrial Buildings; Manufacturing Plants | 096 Sewage Collection, Treatment and Disposal |
| 012 Cemeteries (<i>Planning & Relocation</i>) | 053 Industrial Processes; Quality Control | 097 Soils & Geologic Studies; Foundations |
| 013 Chemical Processing & Storage | 054 Industrial Waste Treatment | 098 Solar Energy Utilization |
| 014 Churches; Chapels | 055 Interior Design; Space Planning | 099 Solid Wastes; Incineration; Land Fill |
| 015 Codes; Standards; Ordinances | 056 Irrigation; Drainage | 100 Special Environments; Clean Rooms, Etc. |
| 016 Cold Storage; Refrigeration; Fast Freeze | 057 Judicial and Courtroom Facilities | 101 Structural Design; Special Structures |
| 017 Commercial Building (<i>low rise</i>); Shopping Centers | 058 Laboratories; Medical Research Facilities | 102 Surveying; Platting; Mapping; Flood Plain Studies |
| 018 Communications Systems; TV; Microwave | 059 Landscape Architecture | 103 Swimming Pools |
| 019 Computer Facilities; Computer Service | 060 Libraries; Museums; Galleries | 104 Storm Water Handling & Facilities |
| 020 Conservation and Resource Management | 061 Lighting (<i>Interiors; Display; Theatre, Etc.</i>) | 105 Telephone Systems (<i>Rural; Mobile; Intercom, Etc.</i>) |
| 021 Construction Management | 062 Lighting (<i>Exteriors; Streets; Memorials; Athletic Fields, Etc.</i>) | 106 Testing & Inspection Services |
| 022 Corrosion Control; Cathodic Protection; Electrolysis | 063 Materials Handling Systems; Conveyors; Sorters | 107 Traffic & Transportation Engineering |
| 023 Cost Estimating | 064 Metallurgy | 108 Towers (<i>Self-Supporting & Guyed Systems</i>) |
| 024 Dams (<i>Concrete; Arch</i>) | 065 Microclimatology; Tropical Engineering | 109 Tunnels & Subways |
| 025 Dams (<i>Earth; Rock</i>); Dikes; Levees | 066 Military Design Standards | 110 Urban Renewals; Community Development |
| 026 Desalination (<i>Process & Facilities</i>) | 067 Mining & Mineralogy | 111 Utilities (<i>Gas & Steam</i>) |
| 027 Dining Halls; Clubs; Restaurants | 068 Missile Facilities (<i>Silos; Fuels; Transport</i>) | 112 Value Analysis; Life-Cycle Costing |
| 028 Ecological & Archeological Investigations | 069 Modular Systems Design; Pre-Fabricated Structures or Components | 113 Warehouses & Depots |
| 029 Educational Facilities; Classrooms | 070 Naval Architecture; Off-Shore Platforms | 114 Water Resources; Hydrology; Ground Water |
| 030 Electronics | 071 Nuclear Facilities; Nuclear Shielding | 115 Water Supply; Treatment and Distribution |
| 031 Elevators; Escalators; People-Movers | 072 Office Buildings; Industrial Parks | 116 Wind Tunnels; Research/Testing Facilities Design |
| 032 Energy Conservation; New Energy Sources | 073 Oceanographic Engineering | 117 Zoning; Land Use Studies |
| 033 Environmental Impact Studies, Assessments or Statements | 074 Ordnance; Munitions; Special Weapons | 201 _____ |
| 034 Fallout Shelters; Blast-Resistant Design | 075 Petroleum Exploration; Refining | 202 _____ |
| 035 Field Houses; Gyms; Stadiums | 076 Petroleum and Fuel (<i>Storage and Distribution</i>) | 203 _____ |
| 036 Fire Protection | 077 Pipelines (<i>Cross-Country - Liquid & Gas</i>) | 204 _____ |
| 037 Fisheries; Fish Ladders | 078 Planning (<i>Community, Regional, Area-wide and State</i>) | 205 _____ |
| 038 Forestry & Forest Products | 079 Planning (<i>Site, Installation, and Project</i>) | |
| 039 Garages; Vehicle Maintenance Facilities; Parking Decks | 080 Plumbing & Piping Design | |
| 040 Gas Systems (<i>Propane; Natural, Etc.</i>) | 081 Pneumatic Structures, Air-Support Buildings | |
| 041 Graphic Design | 082 Postal Facilities | |
| | 083 Power Generation, Transmission, Distribution | |
| | 084 Prisons & Correctional Facilities | |
| | 085 Product, Machine & Equipment Design | |

STANDARD FORM (SF) 254 Architect-Engineer and Related Services Questionnaire	1. Firm Name/Business Address: _____ 1a. Submittal is for <input type="checkbox"/> Parent Company <input type="checkbox"/> Branch or Subsidiary Office 5. Name of Parent Company, if any: _____ 5a. Former Parent Company Name(s), if any, and Year(s) Established: _____ 6. Names of not more than Two Principals to Contact: Title/Telephone 1) _____ 2) _____ 7. Present Offices: City / State / Telephone / No. Personnel Each Office _____ 7a. Total Personnel _____		3. Date Prepared: _____ 4. Specify type of ownership and check below, if applicable. <input type="checkbox"/> A. Small Business <input type="checkbox"/> B. Small Disadvantaged Business <input type="checkbox"/> C. Woman-owned Business																							
8. Personnel by Discipline: (List each person only once, by primary function.) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">— Administrative</td> <td style="width: 33%;">— Electrical Engineers</td> <td style="width: 33%;">— Oceanographers</td> </tr> <tr> <td>— Architects</td> <td>— Estimators</td> <td>— Planners: Urban/Regional</td> </tr> <tr> <td>— Chemical Engineers</td> <td>— Geologists</td> <td>— Sanitary Engineers</td> </tr> <tr> <td>— Civil Engineers</td> <td>— Hydrologists</td> <td>— Soils Engineers</td> </tr> <tr> <td>— Construction Inspectors</td> <td>— Interior Designers</td> <td>— Specification Writers</td> </tr> <tr> <td>— Draftsmen</td> <td>— Landscape Architects</td> <td>— Structural Engineers</td> </tr> <tr> <td>— Ecologists</td> <td>— Mechanical Engineers</td> <td>— Surveyors</td> </tr> <tr> <td>— Economists</td> <td>— Mining Engineers</td> <td>— Transportation Engineers</td> </tr> </table>			— Administrative	— Electrical Engineers	— Oceanographers	— Architects	— Estimators	— Planners: Urban/Regional	— Chemical Engineers	— Geologists	— Sanitary Engineers	— Civil Engineers	— Hydrologists	— Soils Engineers	— Construction Inspectors	— Interior Designers	— Specification Writers	— Draftsmen	— Landscape Architects	— Structural Engineers	— Ecologists	— Mechanical Engineers	— Surveyors	— Economists	— Mining Engineers	— Transportation Engineers
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— Draftsmen	— Landscape Architects	— Structural Engineers																								
— Ecologists	— Mechanical Engineers	— Surveyors																								
— Economists	— Mining Engineers	— Transportation Engineers																								
9. Summary of Professional Services Fees Received: (Insert index number) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">19 _____</td> <td style="width: 33%;">19 _____</td> <td style="width: 33%;">19 _____</td> </tr> <tr> <td>Direct Federal contract work, including overseas</td> <td></td> <td></td> </tr> <tr> <td>All other domestic work</td> <td></td> <td></td> </tr> <tr> <td>All other foreign work*</td> <td></td> <td></td> </tr> </table> <p>*Firms interested in foreign work, but without such experience, check here: <input type="checkbox"/></p>			19 _____	19 _____	19 _____	Direct Federal contract work, including overseas			All other domestic work			All other foreign work*														
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Direct Federal contract work, including overseas																										
All other domestic work																										
All other foreign work*																										

STANDARD FORM 254 PAGE 4 (REV. 11-92)

10. Profile of Firm's Project Experience, Last 5 Years									
Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Total Gross Fees (in thousands)
1)			11)			21)			
2)			12)			22)			
3)			13)			23)			
4)			14)			24)			
5)			15)			25)			
6)			16)			26)			
7)			17)			27)			
8)			18)			28)			
9)			19)			29)			
10)			20)			30)			

11. Project Examples, Last 5 Years					
Profile Code	"P," "C," "JV," or "IE"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

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FAC 90—16 FEBRUARY 19, 1993

53.301-254

FEDERAL ACQUISITION REGULATION (FAR)

[illegible]

STANDARD FORM 254 PAGE 6 (REV. 11-92)

FAC 90—16 FEBRUARY 19, 1993

PART 53—FORMS

53.301-254

[illegible]

STANDARD FORM 254 PAGE 7 (REV. 11-92)

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<p>STANDARD FORM (SF) 255</p> <p>Architect-Engineer and Related Services Questionnaire for Specific Project</p>	<p>Form Approved OMB No. 9000-0005 Expires 7-31-94</p>
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Public reporting burden for this collection of information is estimated to average 1.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Management and Budget, Paperwork Reduction Project (9000-0005), Washington, D.C. 20503.

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants," as used in this questionnaire, refer to individuals who will have major project responsibility or will provide unusual or unique capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.
2. Provide appropriate data from the *Commerce Business Daily* (CBD) identifying the particular project for which this form is being filed.
 - 2a. Give the date of the *Commerce Business Daily* in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.
 - 2b. Indicate Agency identification or contract number as provided in the CBD announcement.
3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.
 - 3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.
 - 3b. Give the address of the specific office which will have responsibility for performing the announced work.
4. Insert the number of consultant personnel by discipline proposed for subject project on line (A). Insert the number of in-house personnel by discipline proposed for subject project on line (B). While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines -- sociologists, biologists, etc. -- and number of people in each, in blank spaces.
5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility (i.e., technical disciplines, administration, financial, sociological, environmental, etc.).
 - 5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

STANDARD
FORM (SF)
255

**Architect-Engineer
and Related Services
Questionnaire for
Specific Project**

Standard Form 255
General Services Administration
Washington, D.C. 20405

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additional sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states; and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), and name and phone number of individual to contact for reference (preferably the project manager), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A-E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non-Federal Governmental entities. Information provided under each heading is similar to that requested in the preceding item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A-E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect-engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. **ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.**

STANDARD FORM (SF) 255 Architect-Engineer and Related Services Questionnaire for Specific Project	1. Project Name/Location for which Firm is Filing:	2a. Commerce Business Daily Announcement Date, if any:	2b. Agency Identification Number, if any:																																																				
3. Firm (or Joint-Venture) Name & Address		3a. Name, Title & Telephone Number of Principal to Contact																																																					
4. Personnel by Discipline: (List each person only once, by primary function.) and In-house personnel on line (B).		3b. Address of office to perform work, if different from Item 3																																																					
<table border="0" style="width: 100%;"> <tr> <td style="width: 25%;">(A) _____ (B) _____</td> <td style="width: 25%;">Administrative</td> <td style="width: 25%;">(A) _____ (B) _____</td> <td style="width: 25%;">Electrical Engineers</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Architects</td> <td>(A) _____ (B) _____</td> <td>Estimators</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Chemical Engineers</td> <td>(A) _____ (B) _____</td> <td>Geologists</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Civil Engineers</td> <td>(A) _____ (B) _____</td> <td>Hydrologists</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Construction Inspectors</td> <td>(A) _____ (B) _____</td> <td>Interior Designers</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Draftsmen</td> <td>(A) _____ (B) _____</td> <td>Landscape Architects</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Ecologists</td> <td>(A) _____ (B) _____</td> <td>Mechanical Engineers</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Economists</td> <td>(A) _____ (B) _____</td> <td>Mining Engineers</td> </tr> </table>		(A) _____ (B) _____	Administrative	(A) _____ (B) _____	Electrical Engineers	(A) _____ (B) _____	Architects	(A) _____ (B) _____	Estimators	(A) _____ (B) _____	Chemical Engineers	(A) _____ (B) _____	Geologists	(A) _____ (B) _____	Civil Engineers	(A) _____ (B) _____	Hydrologists	(A) _____ (B) _____	Construction Inspectors	(A) _____ (B) _____	Interior Designers	(A) _____ (B) _____	Draftsmen	(A) _____ (B) _____	Landscape Architects	(A) _____ (B) _____	Ecologists	(A) _____ (B) _____	Mechanical Engineers	(A) _____ (B) _____	Economists	(A) _____ (B) _____	Mining Engineers	<table border="0" style="width: 100%;"> <tr> <td style="width: 25%;">(A) _____ (B) _____</td> <td style="width: 25%;">Oceanographers</td> <td style="width: 25%;">(A) _____ (B) _____</td> <td style="width: 25%;">Planners: Urban/Regional</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Sanitary Engineers</td> <td>(A) _____ (B) _____</td> <td>Soils Engineers</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Specification Writers</td> <td>(A) _____ (B) _____</td> <td>Structural Engineers</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td>Surveyors</td> <td>(A) _____ (B) _____</td> <td>Transportation Engineers</td> </tr> <tr> <td>(A) _____ (B) _____</td> <td colspan="3" style="text-align: right;">Total Personnel</td> </tr> </table>		(A) _____ (B) _____	Oceanographers	(A) _____ (B) _____	Planners: Urban/Regional	(A) _____ (B) _____	Sanitary Engineers	(A) _____ (B) _____	Soils Engineers	(A) _____ (B) _____	Specification Writers	(A) _____ (B) _____	Structural Engineers	(A) _____ (B) _____	Surveyors	(A) _____ (B) _____	Transportation Engineers	(A) _____ (B) _____	Total Personnel		
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5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)																																																							
5a. Has this Joint-Venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No																																																							

6. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).		
Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	
b. Project Assignment:	
c. Name of Firm with which associated:	
d. Years experience: With This Firm..... With Other Firms.....	
e. Education: Degree(s)/Year/Specialization	
f. Active Registration: Year First Registered/Discipline	
g. Other Experience and Qualifications relevant to the proposed project:	

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7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	
b. Project Assignment:	
c. Name of Firm with which associated:	
d. Years experience: With This Firm..... With Other Firms.....	
e. Education: Degree(s)/Year/Specialization	
f. Active Registration: Year First Registered/Discipline	
g. Other Experience and Qualifications relevant to the proposed project:	

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	
b. Project Assignment:	
c. Name of Firm with which associated:	
d. Years experience: With This Firm..... With Other Firms.....	
e. Education: Degree(s)/Year/Specialization	
f. Active Registration: Year First Registered/Discipline	
g. Other Experience and Qualifications relevant to the proposed project:	

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7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

8. Work by firms or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).					
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address and Project Manager's Name & Phone Number	d. Completion Date (actual or estimated)	e. Estimated Cost (in Thousands)	
				Entire Project	Work For Which Firm Was/is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

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9. All work by firms or joint-venture members currently being performed directly for Federal agencies.					
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number	d. Percent Complete	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Is Responsible

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10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

Signature: _____

Typed Name and Title: _____

Date: _____

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